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CURRENT TOPICS

Litigate, Don't Arbitrate

A CONTROVERSY which flares up from time to time with great regularity is that of the relative merits of commercial arbitration and litigation. The business community appears to have formed the view that all advantages are with arbitration, and, having done so, has in many cases organised a procedure which is so tortuous and expensive that it would not be accepted by the courts, which favour nowadays a more "robust" approach. The men with the dusty feet were told in December, 1956, by the House of Lords in *Fairclough, Dodd & Jones, Ltd. v. J. H. Vantol, Ltd.* [1957] 1 W.L.R. 136, 144; *ante*, p. 86, that the delays of five years of commercial litigation were not due to the "delays of the law" (see our note in the issue of 15th December, 1956, 100 SOL. J. 919), and a few weeks ago they were again told by DEVLIN, J. (in *Peter Cassidy Seed Co., Ltd. v. Osuustukkukauppa I.L.* [1957] 1 W.L.R. 273; *post* p. 149), that a judge of the Commercial Court could deal in one and three quarter hours with a point of law which it took arbitration some three years to formulate and bring before him. The purpose of these *dicta* from the Bench is not to detract from the value of commercial arbitration as such. Devlin, J., himself, in the *Cassidy* case, said that there were many cases in which arbitration served a useful purpose. Such *dicta* merely intend to criticise the abuse of arbitration procedure where a decision of the Commercial Court would be more expeditious and less expensive.

Making and Breaking an Arbitration Agreement

THE suggestion of the courts, if properly understood, is not that people should cease to enter into arbitration agreements. Such agreements are of the greatest value, particularly in international contracts where they localise a dispute in the English jurisdiction and are an indirect means of adopting English law as the law governing the contract. Moreover, when the arbitration clause is inserted into the contract, it is quite unforeseeable whether a dispute between the parties will arise and, if so, whether it will be a dispute of law, of fact, or of both. The real point is that if a dispute has arisen which substantially concerns an issue of law, the parties should be more readily prepared than they are at present to abandon the arbitration agreement—which was inserted to serve a different contingency—and to take the matter to court. At present the safest course to achieve this is to obtain the agreement of the other party who, however, will rarely co-operate. Failing such agreement, the party who wishes to move first may take the matter to court, but in the majority of cases the court will

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stay the proceedings on the application of the other party under s. 4 (1) of the Arbitration Act, 1950. One day the legislator may perhaps come to the help of a party who, against the wish of the other party, wishes to break an arbitration agreement which is palpably unsuitable for the solution of the dispute which has arisen between the parties.

Non-Jury List: Practice Direction

ON 1st February the LORD CHIEF JUSTICE gave the following practice direction: "Since the beginning of the present sittings there has been an exceptionally large number of consent applications to postpone cases in the non-jury list, due no doubt largely to the rapidity with which cases now come on for trial. This has led to a certain amount of confusion, and indeed often to serious inconvenience, since parties have found that, owing to the postponement of cases which would otherwise have been tried first, their own has unexpectedly come into the list for trial. In recent years a practice has grown up, though not authorised by any rule, whereby a postponement has been granted upon the filing of a properly stamped form of consent, and an application to the judge in charge of the list has not been required. For the time being, at least, this practice will have to be discontinued, and in future if postponement of a case which is in the week's list is desired, application will have to be made to the judge in charge of the list and good cause shown. As a further measure to meet the present situation the number of cases which will be included in the week's list will be considerably reduced and will be limited to seventy for the coming week."

Insulin and Driving

It is no exaggeration to describe the Divisional Court's decision on 12th January in *Armstrong v. Clark* as one of gravity, but it is important to see it in perspective. It was held that insulin was a drug within the meaning of s. 15 (1) of the Road Traffic Act, 1930, and that "if people are in a condition of health which renders them subject to comas, or the remedies for which might send them into comas, they ought not to drive, because of the danger which results to the rest of Her Majesty's subjects." The appellant, a pharmaceutical chemist, who had suffered from diabetes for twelve years, was found at the wheel of his stationary car in a semi-comatose state, due to the over-action of the usual and prescribed dose of insulin which he had taken. The case was sent back to the magistrates, who had held that insulin was not a drug. Although this decision may seem hard on the thousands of motorists who are diabetics, the risk of coma due to the taking of insulin must involve the same legal consequences as those attaching to the taking of other drugs. It remains a question of fact, however difficult, for the magistrate to decide, whether a diabetic coma is due to the influence of insulin, or due to the failure of the dose of insulin to have any influence at all, and therefore due entirely to the disease. Although insulin is a drug within the accepted meaning of the word, it does not follow that everyone who has taken a dose is under its influence. Its intended effect is to produce a condition of normality and not merely to soothe or excite, as in the case of most drugs. Where the defendant's condition at the material time was not normal, the onus of proving that he is under the influence of insulin would therefore seem to be heavier than in the case of other drugs and of alcohol.

Insurance Law Reform

THE report of the Law Reform Committee, under the chairmanship of LORD JUSTICE JENKINS, on the effect on the liability of insurance companies of special conditions and exceptions in their policies was published on 30th January. It proposed that the law be amended to secure: (1) That no fact should be deemed material unless it would have been considered material by a reasonable insured; (2) that, notwithstanding anything contained in a contract, no defence to a claim under it should be maintainable by reason of any mis-statement of fact by the insured, where the insured can prove that the statement was true to the best of his knowledge and belief; (3) that any person who solicits or negotiates a contract of insurance should be deemed, for the purposes of the formation of the contract, to be the agent of the insurers, and that the knowledge of such person should be deemed to be the knowledge of the insurers. The committee agreed, however, that no reputable insurer would rely on a purely technical defence to defeat an honest claim. They hoped that others would follow the lead of the British Insurance Association and Lloyd's and refrain in general from insisting on enforcing arbitration clauses on questions of liability. This would go far to remove the complaint that compulsory arbitration had tended to obscure whether or not insurance companies abused their position.

Further Reforms?

THE Lord Chancellor has asked the Law Reform Committee to consider: (1) Whether any alteration is desirable in the powers of the court to sanction a variation of the trusts of a settlement in the interests of beneficiaries under disability and unborn persons, with particular reference to the decision in *Chapman v. Chapman* [1954] A.C. 429; (2) the law whereby the liability to tax of a person entitled to damages is required to be taken into account in assessing the damages, with particular reference to the decision in *British Transport Commission v. Gourley* [1956] A.C. 185; 100 SOL. J. 12.

The Mayor's and City of London Court

A HIGH COURT action in the Mayor's and City of London Court probably sounds like a contradiction in terms to many people, but in fact S.R. & O., 1944, No. 1084 (L.41) provides for just that. An "original Mayor's Court action," that is, one within its unlimited jurisdiction in cases where the cause of action arises wholly within the City, is to proceed in all respects as a High Court action and with costs on the High Court scale, but it is evidently unknown to many practitioners. Recently a labourer suffered injuries at a building site within the City of London, and an action was commenced in the Mayor's and City of London Court in which the claim for damages was limited to £400, the intention presumably being to bring the action within the county court jurisdiction of that court. It transpired that the injuries suffered by the plaintiff had given rise to a permanent disability. Application was made by the plaintiff to transfer the action to the High Court on the grounds given in s. 5 of the County Courts Act, 1955. The application was attended by counsel and solicitors for both parties, all of whom had either overlooked or were unaware of the jurisdiction of the Mayor's and City of London Court in an original Mayor's Court action for an unlimited amount over £400.

INNKEEPERS' LIABILITY

DESPITE the longish interval between the enactment of the Hotel Proprietors Act, 1956, and its coming into force on the first day of this year, not all hotel managements have yet got round to putting up on their premises the new form of words necessary to limit their common-law liability as innkeepers for the safety of their guests' property. Some have signalled the new year by taking down the impressive framed document beginning "Anno Vicesimo Sexto et Vicesimo Septimo Victoriae Reginae" which so intrigued the ladies, but have apparently not yet received from the printer the appropriate replacement. Of course, keeping up the old copy of s. 1 of the Innkeepers' Liability Act, 1863, would be of no effect anyway, for the 1956 Act did not neglect to repeal that of 1863. But let no hotel proprietor fear that, by exhibiting the new notice, he would thereby be admitting that his establishment was an inn at common law. For although the Law Reform Committee, whose recommendations in their Second Report the Act somewhat docilely follows, thought that in a doubtful case the exhibition of the statutory notice might conclude the question of the status of the premises against the proprietor, the last sentence of the new notice scheduled to the 1956 Act makes it quite clear that this neat practical solution of a potentially difficult problem is not to be. The notice is to be taken as admitting nothing.

A criticism

The new Act is both an achievement and a missed opportunity. Undoubtedly it puts a new and more reasonable figure on the limitation which a proprietor can secure to his common-law obligation to see to the safety of a traveller's goods, and it introduces three sensible alterations or clarifications of the extent of that obligation. But in framing the definition of an hotel (s. 1 (3)), Parliament has taken so literally the committee's recommendation that such a definition should be based on the existing common-law meaning of the term "inn" as to leave precisely as before the question whether any particular house is or is not an inn, or an hotel, the latter term being merely an inn's correctly uneuphonious *alter ego*. And the definition does not only serve the purpose of the substantive provisions of the Act. Aside from the safeguarding of property, the quite important question how far a traveller can insist on being accommodated will also involve answering a test question of fact on the evidence, for the statutory definition is made to run throughout the law (s. 1 (1)).

The criterion is this: Did the proprietor hold out the establishment as offering food, drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appeared able and willing to pay a reasonable sum for the services and facilities provided and who was in a fit state to be received? How is the proper answer to this question to be forecast by the traveller when he first comes to the threshold of the hostelry? That is the stage at which the exact legal position ought to be ascertainable by him. No doubt most inns and hotels which fulfil this description do so to notoriety. But as to the rest, an individual traveller only knows what sort of reception he had when he made it known that he wanted a meal or a bed. There may be many cases in which he will have to have inquiries made among a number of other unspecified persons before he can allege that the proprietor "held out" to all and sundry.

It is easy to see how a circular definition like this obtains at a period when the matter is still one of custom or case law. When it comes to legislation one might expect something less

productive of wasteful litigation. The Law Reform Committee, having decided that a test based on the number of bedrooms would not be satisfactory, appears to have given up the search for an improvement on the common-law definition because they thought that the exhibition of the notice would solve doubtful cases. We have already pointed out that this cannot now be so. Surely the solution is to inaugurate some system of indelible labelling. If persons who desired or were willing to conduct hotels as described in the Act were given an absolute monopoly of the word "hotel," and required to exhibit it in a prominent place *outside* the premises, or were subjected to compulsory registration, we should all know better where we were.

Liability for loss and damage

The Act does not at any point affect any liability which the proprietor of an hotel may incur and which sounds in negligence or, indeed, in any cause of action outside the common-law relationship of innkeeper and guest. As regards the property which the guest brings to the premises, an innkeeper has at common law a lien to cover his reasonable charges for food, services and accommodation, and in return must for practical purposes take on the rôle of an insurer with absolute liability. This situation with the modifications effective under the Act is explained very clearly in the statutory form of notice.

The first point for comment is that by s. 1 (2) damage to the guest's property is now put on the same footing as its loss, so far as the innkeeper's liability is concerned, thus settling a line of doubts extending from *Winkworth v. Raven* [1931] 1 K.B. 652 to *Williams v. Owen* [1956] 1 All E.R. 104. Then s. 2 (1) of the Act modifies the absolute liability of the innkeeper for that loss or damage by restricting it (with apparently no corresponding restriction on his lien) to what may loosely be called travellers away from home. In terms it excludes any such absolute liability (but without prejudice to any other) except where *at the time of the loss or damage* sleeping accommodation at the hotel had been engaged for the traveller, and the loss occurred during the period from the midnight before arrival to the midnight after the traveller ceased to be a guest.

A new distinction

A practical effect of this new form of limitation on the innkeeper's absolute liability is to create two classes of traveller. First, there is the customer who, in pursuance of the "holding out" and of the common law, can insist on being provided with refreshment or accommodation according to his requirements and to the resources which the host may reasonably have available. Whether he has booked sleeping accommodation does not matter, and on the basis of *Williams v. Linnitt* [1951] 1 K.B. 565 it is also immaterial whether he is a needy wayfarer or a local resident. The proprietor renders himself liable to proceedings on indictment if he refuses without reasonable excuse to provide what is required. But only to travellers who have booked a bedroom will mine host in future be liable, as an innkeeper, for any mischance affecting their property.

Vehicles

Next, as to the nature of the property covered by the innkeeper's common-law obligation, s. 2 (2) breaks new ground in excluding *both from the lien and from absolute liability* a

vehicle or any property left therein, or a horse or other live animal or its harness or equipment. By this provision it has been found possible to reverse the effect of such cases as *Williams v. Linnitt and Gresham v. Lyon* [1954] 1 W.L.R. 1100 without entering on the awkward task of delimiting by statute the *hospitium* of an inn. The question of the true boundaries of the hotel may still, of course, be relevant where, e.g., a guest for a night puts his suitcase down in the yard; but at least the point is well dead where motor cars are concerned. The traveller should see that his own insurance policy is sufficiently comprehensive.

Pecuniary limitation

Lastly, there comes the important subs. (3) of s. 2. The pattern is the familiar one. The proprietor can limit his absolute liability at common law by the conspicuous display of the notice to which we have referred. The copy put up must be printed in plain type and it must, *at the time when the property is brought to the premises*, be in a place where it can conveniently be read by guests at or near the reception

office or desk or, where there is no reception office or desk, at or near the main entrance to the hotel. The new limit thereby secured is set at £50 for any one article, and £100 in the aggregate in the case of any one guest. As under the old statute, this liability ceiling does not keep down a claim for property stolen, lost or damaged through default, neglect or wilful act of the proprietor or his servants; nor one for property deposited or offered for deposit expressly for safe custody.

The recent Act enters into some detail in regard to the mode of deposit necessary to take property out of the pecuniary limitation. It is sufficient if the property is left with some servant of the proprietor authorised or appearing to be authorised for the purpose. Practitioners will note that it still leaves uncovered a case where a traveller leaves a valuable article with a fraudulent person who, while he takes pains to appear to be authorised, is not in fact a servant of the proprietor. Of the two parties defrauded by such an impostor, it seems that the innkeeper would have to bear the first £50 and the guest the remainder of the loss.

J. F. J.

JUDGMENT SUMMONSES IN COUNTY COURTS

YOUR contributor, without having delved deeply into statistics relating to civil litigation, confesses to retaining a marked impression that, however useful judgment summonses may be in the enforcement of judgments, they lag far behind in numbers compared with executions against goods. It is even easier to form the impression that they are more in favour with certain kinds of judgment creditors acting in person than with solicitors. The former seem to be able more easily to put themselves in a position to offer the court some evidence of the judgment debtor's means and general circumstances, often as a result of admissions or statements at a personal interview, dealing with a batch of several or numerous cases at a time. This method is not often resorted to by solicitors, possibly because of the expense involved in the employment of an inquiry agent. For a long time in the recent past, a common method used for advancing the matter was to cause conduct money to be paid to the judgment debtor in order (with the aid of Form No. 179) to add to the judgment summons itself the characteristics of a witness summons, and so procure the debtor's attendance for interrogation as to his means. It was readily recognised that the method of enforcing the debtor's attendance if he disobeyed the requirements of the judgment summons so reinforced was not satisfactory. It cannot be known what proportion of debtors in fact so disobeyed, but the Council of Judges of County Courts thought the matter sufficiently significant to bring it to the notice of the Committee on County Court Procedure which sat under the chairmanship of Mr. Justice Austin Jones and presented its Final Report in April, 1949 (Cmd. 7668: see p. 29). This Committee suggested that a partial solution was available, without legislation, by the process of obtaining (under Ord. 25, r. 2) an order for the oral examination of the debtor, to be conducted on the hearing of the judgment summons. Rules to facilitate the adoption of this suggestion were introduced in January, 1955. The additional sanction thus furnished lay in the provision that a disobedient debtor as respects an order for oral examination may be attached (Ord. 25, r. 2 (4)).

New procedure

Both these expedients, upon which some of the efficacy of the judgment summons procedure at least in part depended,

have now been cast to the winds, and an extremely simple and realistic mechanism provided in its place.

The important basis for this change of procedure is to be found in s. 27 of the Administration of Justice Act, 1956, which came into force on 1st January, 1957. Provisions in support thereof were included in the County Court (Amendment No. 3) Rules, 1956, coming into operation at the same time.

The compulsive effect of a judgment summons reinforced by Form No. 179 and the payment of conduct money has been wholly abrogated by the withdrawal of the original r. 43 in Ord. 25, which regulated the use of Form No. 179, and also that form itself; and their replacement by a new rule and form based on the powers conferred by s. 27. In addition, the 1955 amendments introduced to facilitate the practice of allying an order for oral examination to a judgment summons have been revoked.

In substitution, a judge of county courts is endowed with the simple power to order that a judgment debtor summoned before him on a judgment summons shall attend before him at "a specified time on a specified day" to which the hearing of the judgment summons is adjourned for that purpose. The debtor's default in this respect, or his refusal to be sworn or to give evidence if and when he attends, will be visited with committal to prison for a term of not more than fourteen days.

Conduct money

The order referred to (the new Form No. 179) must be personally served upon the judgment debtor not less than five clear days before the date fixed for the adjourned hearing (Ord. 25, r. 43 (1)). He will not be committed for non-attendance thereat unless there was paid or tendered to him on such service, or upon the original service of the judgment summons itself, what is conveniently and usually called conduct money, namely, "such sum in respect of his expenses as may be prescribed" (s. 27 (2), proviso), and which must be "a sum reasonably sufficient to cover his expenses in travelling to and from the court, with a minimum of one shilling" (Ord. 25, r. 43 (2)).

These changes in procedure provide a welcome simplification so far as concerns the average practitioner handling judgment summonses on comparatively infrequent occasions. On balance, it will probably be found more convenient not to provide conduct money to be paid or tendered on service of the judgment summons. (There seems not to be any provision requiring this to be done, or even, apparently, authorising the registrar to accept a payment for such a purpose; and in any case nothing resembling the old Form No. 179 can

now be added to the judgment summons to suggest that any sanction exists in consequence of any such payment.) There is always a chance that the judgment debtor may pay without further compulsion on being served. If he does not and fails also to attend the hearing of the judgment summons, payment of conduct money can—indeed, then must—be accomplished on the service of the order under s. 27 which the judge will presumably then be invited to make.

G. M. B.

Company Law and Practice

RESTRICTIONS ON APPOINTMENT OF PROXIES

UNDER s. 206 of the Companies Act, 1948 (dealing with compromises and schemes of arrangement), provision is made for the convening of meetings of members or any class or classes of members or creditors or any class or classes of creditors, and subs. (2) indicates that votes may be cast by proxy. The case of *Re Dorman, Long & Co., Ltd.* [1934] Ch. 635 shows that any proper form of proxy can be used and that proxies need not be lodged in advance of the meeting. The basis of those decisions seems to have been that the section (to be correct, the similar s. 153 of the Companies Act, 1929) conferred a general right to vote by proxy which the court had no power to take away or cut down by restrictions as to the form of proxy to be used or as to the deposit of the form of proxy some specified time before the meeting. Maugham, J., in a lengthy and valuable judgment carefully refrained from taking his decisions on the point an inch further than was strictly necessary, but the above basis does seem to have been clearly implied.

Prior to the passing of the Companies Act, 1947, there was no statutory right to vote by proxy at ordinary company meetings. There is no common-law right to vote by proxy (*Harben v. Phillips* (1883), 23 Ch. D. 14) and voting by proxy at company meetings was, where allowed, provided for under articles of association (e.g., arts. 58 to 62 of the 1929 Table A) and thus could properly be made subject to restrictions under the articles of association. Now that there is a statutory right of proxy, it is interesting to consider whether, under the articles of association, it is lawful to impose restrictions upon the exercise of that power.

In *Harben v. Phillips, supra*, the judgment of Cotton, J., contains the following words: "The right of a shareholder to vote by proxy depends on the contract between himself and his co-shareholders . . . and all the requisitions of the contract as to the exercise of the right must be followed." The first part of the quotation no longer represents the law and, as a matter of principle, it is difficult to see why the second part should hold good in the face of the clearly established principle that articles of association cannot vary or restrict a right conferred by statute (*Re Peveril Gold Mines, Ltd.* [1898] 1 Ch. 122). On principle, it would seem that articles of association ought not to be able to restrict the statutory power to vote by proxy conferred by s. 136 (1) except to such extent as the Act may expressly or by implication permit.

Section 136 (3), dealing with the deposit in advance of an instrument appointing a proxy, is framed as being a restriction on the power of the company by means of its articles of association to require such instruments to be lodged in advance. The implication is that, but for the subsection,

there would be an unlimited power of such nature. On the basis of *Re Dorman, Long & Co., supra*, it is at first sight difficult to see why this should be so, although an attempted explanation is put forward later in this article. Nevertheless, in view of subs. (3) one must accept that, within the limit therein laid down, such a power exists.

Table A

Regulation 71 of the 1948 Table A, owing to the wording "Where it is desired to afford members an opportunity of voting for or against a resolution," clearly relates to instruments of proxy sent out by the company to its members. Regulation 68 is of general application, but probably is only declaratory. It is tempting to construe reg. 70 (regulating the form of an instrument of proxy) as relating only to instruments of proxy sent out by the company to its members, in which event the 1948 Table A would be not inconsistent with *Re Dorman, Long & Co.*, if applicable since 1st July, 1948, to ordinary company meetings. It does seem, however, that the wording of reg. 70 is too clear and definite to admit of being construed as above, and that one must accept that the 1948 Table A is not *prima facie* consistent with the view that *Re Dorman, Long & Co.* is now applicable to ordinary company meetings. It has been held that an article in substance identical with a regulation found in Table A cannot be *ultra vires*, seeing that s. 8 (1) authorises a company to adopt the provisions of Table A (*Lock v. Queensland Investment and Land Mortgage Co.* [1896] A.C. 461; *New Balkis Eersteling, Ltd. v. Randt Gold Mining Co.* [1904] A.C. 165). Lord Davey, in the latter case cited, says: "It would be ridiculous to say that that which is prescribed by an Act of Parliament, for the model articles of a company formed under that Act, could be *ultra vires*." It is true that the Act in question is a consolidating Act and the provisions in question (Table A) are derived not directly out of a former Act but out of regulations (the Companies (Articles of Association and Annual Return) Regulations, 1948) which were made under the Companies Act, 1929, s. 379, as amended by the Companies Act, 1947, s. 120 (2), and would not have been valid to the extent (if any) to which they were in conflict with the provisions of the Companies Acts, 1929 and 1947; nevertheless, the cases cited (and see also *Re Fletcher; ex parte Fletcher v. Official Receiver* [1956] 1 Ch. 28; 99 SOL. J. 452) must be accepted as authority for saying that articles following in substance the 1948 Table A cannot be *ultra vires* and, therefore, as authority for saying that articles of association can lawfully regulate the form of an instrument of proxy in manner substantially identical to the relevant provisions of the 1948 Table A.

Differing powers of court

In the case of a meeting convened pursuant to s. 346 of the Companies Act, 1948 (dealing with meetings in a winding up to ascertain wishes of creditors or contributories), *Re Dorman, Long & Co.* has no application because, under that section, the meeting is to be "called, held and conducted" as the court directs and, therefore, the court has power to give directions as to the form of instruments of proxy and as to the lodgment thereof (*Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch. 385). The position is different under s. 206 of the Companies Act, 1948, because the court has power only as to how the meeting is to be "summoned," and the phrase quoted is inapposite to cover questions of voting. Here, perhaps, can be found the reason why *Re Dorman, Long & Co.* is not applicable to proxies for an ordinary company meeting, even though the right to vote by proxy thereat is now, in relation to most companies, a statutory right.

The Companies Act, 1948, does not itself lay down the procedure for "calling, holding and conducting" company meetings. This is one of the matters which, under s. 8, is left to be determined by the articles of association, although, so far as the articles do not exclude or modify the relevant Table A, that Table A will apply. Section 134 covers to some extent the summoning of meetings, but only has effect in so far as the articles of association do not make other provision in that behalf. The wording of s. 135 clearly

implies that, in the ordinary course, company meetings are to be "called, held and conducted" in manner prescribed by the articles of association or, where applicable, the Act. This being the case it is reasonable to argue that, on matters affecting the "calling, holding and conducting" of ordinary company meetings, the powers of the company to make regulations correspond to the powers of the court under s. 346 and that, therefore, the articles of association of a company can regulate the form of an instrument appointing a proxy and (subject to s. 136 (3)) the deposit of such instruments. This does not mean, of course, that a company could by its articles of association require some very unusual and tricky form of proxy or require that proxies be deposited at some inaccessible place in advance of the meeting; the general principle would apply that the regulations could be declared invalid if "not bona fide for the benefit of the company as a whole" (*Allen v. Gold Reefs of West Africa, Ltd.* [1900] 1 Ch. 656).

It may seem a little strange that a company can by its articles of association lawfully impose restrictions upon the exercise of a statutory right to vote by proxy. However, it is clear that articles of association can lawfully do so at any rate in manner substantially identical to the relevant provisions of the 1948 Table A. Whether articles of association can lawfully go further is not completely clear, although the odds are that they can.

J. W. M.

EAVES AND FOOTINGS

THE conveyancing world will no doubt take some interest in the decision in *Truckell v. Stock* [1957] 1 W.L.R. 161; *ante*, p. 108, heard before the Court of Appeal. The real point at issue was whether or not the plan in the conveyance was to prevail not so much over the description in the deed itself as over the physical boundaries of the object, a dwelling-house, which was being conveyed. A reference to Halsbury's Laws of England, 3rd ed., on the subject of conveyancing by plan shows that a complete and unambiguous description in a deed will prevail over a plan (*Horne v. Struben* [1902] A.C. 454, P.C., at p. 458) and that this will be so although the words of the deed are general, if sufficiently definite (*Willis v. Watney* (1881), 51 L.J. Ch. 181); but the plan will prevail if the words are indefinite and require the plan to explain them (*Eastwood v. Ashton* [1915] A.C. 900).

Truckell v. Stock

In the case before the court, the plaintiff bought one of two adjoining dwelling-houses, then in common ownership, and in 1953 the defendant bought the other. The parcels in the conveyance to the plaintiff were in terms which were perhaps a trifle unusual: "All that land dwelling-house, office, garages, outbuildings and premises situate in East Street, Colchester, aforesaid, and lying to the west of the right of way or roadway hereinafter mentioned and delineated and coloured pink and red on the plan attached hereto the dwelling-house and office being known as No. 45 East Street." The fact was that the footings and eaves of the house extended beyond the area coloured pink on the plan. One wall overlooked the yard which was part of No. 44 East Street, occupied by the defendant. The plaintiff enlarged the window in the wall, which seems to have annoyed the defendant, for he put up a wall, forming part of a shed, which covered the area of

the enlargement. While this wall was about a half-inch away from the plaintiff's, the evidence shows that the base of it rested on the footings and made direct contact with them. The plaintiff brought an action for trespass.

The county court judge considered that he was bound to hold that the footings and eaves were not included in the conveyance to the plaintiff as the plan prevailed. After referring to *Manning v. Fitzgerald* (1859), 29 L.J. Ex. 24, and *Corbett v. Hill* (1870), L.R. 9 Eq. 671, Denning, L.J., came to the conclusion that the conveyance did include the footings and eaves but not the column of air between. On this basis the defendant was guilty of trespass. He then went on to say, *obiter*, that the defendant would have been guilty of trespass even if the wall had not made direct contact with the footings. This *dictum* will be considered later.

Hodson, L.J., reached the same conclusion, though perhaps with more caution. As he saw it, the argument was that if there is no qualifying clause to the effect that the plan is for the purposes of identification only, and the words of description in the deed are inadequate, then the plan prevails in accordance with the passage from the judgment of Lord Wrenbury in *Eastwood v. Ashton*, *supra*: "My lords, I find that the description by plan is couched in the words 'all which said premises are more particularly described.' The words 'more particularly' exclude, I conceive, that they have already been exclusively described. These words seem to mean to me that the previous description may be insufficient for exact delimitation, and the plan is to cover all deficiencies if any."

The learned lord justice took the view that in this case the plan and the description in the deed were not inconsistent if one remembered that the plan was at ground level and, while

it would control ownership of the air space above and, presumably, the soil below, it did not prevent projections other than at ground level which formed part of the physical thing described in the parcels. Again he found the defendant was guilty of trespass, but preferred to express no opinion on Denning, L.J.'s dictum.

The third member of the court, Ormerod, J., concurred.

Trespass

Several points arise out of the case. First of all, the suggestion that there could be trespass without direct contact. This seems contrary to all the established authorities and teachings. If there is some soil on top of the footings then there is always some downward thrust, however minute; merely to increase the thrust without making direct contact can hardly be trespass so long as the defendant owns the soil. The remedy, if any, must be nuisance. But if the structure on the soil begins to sink, then as and when it touches the footings it becomes trespass in accordance with *Gregory v. Piper* (1829), 9 B. & C. 591.

The effect of the plan

But the main importance of the decision is in relation to conveyancing by plan. Is it to be taken that unless otherwise indicated all plans are at ground level? This seems a reasonable assumption. A plan is horizontal and not, as a rule, vertical. A standard level seems desirable. But what is to be taken as the dividing line where a plan governs the

vertical as well as the horizontal? So far as concerns the air space, soil and minerals, in short all things natural, the dividing line will be constant in accordance with the maxim "*cujus est solum ejus est usque ad cælum et ad inferos*," and that dividing line is the boundary at ground level in accordance, where appropriate, with the plan or other description. But so far as things unnatural, such as houses and cesspits, are concerned, the dividing line may be varied to include projections at the time of the severance of the common ownership or projections which have at some time come into the ownership of the vendor or his predecessors in title.

But suppose the plan prevails over the description? Does it still remain at ground level? It may be argued that the plan is descriptive as well as delineative and to that extent conveys whatever physical entities are included in the delineated area. If so, then projections could be included. But if it is delineative at all levels, projections could not be included.

It is to be noted that, in the conveyance in question, the words "more particularly" are not used as an adverb to the word "delineated." One wonders whether, if they had been used, the result would have been the same. The conclusion is that it would; though these are the words Lord Wrenbury had in mind, the descriptive words used in the parcels of the deed are surely definitive enough without the need for a plan, and on this ground *Eastwood v. Ashton* would have been distinguished.

G. W. D. P.

Landlord and Tenant Notebook

MISSTATEMENT IN NOTICE TO TERMINATE BUSINESS TENANCY

THE first point to be decided in *Biles v. Caesar* [1957] 1 W.L.R. 156; ante, p. 108 (C.A.), was whether a landlord, who, when terminating a tenancy of business premises, and again when notifying opposition to the tenant's application for a new tenancy, has stated an intention to demolish and reconstruct the whole of the premises, is disqualified from opposing it when it transpires that all he intended to do was to demolish and reconstruct a substantial part. It was held that he is not.

The facts were that two brothers, joint owners of the premises concerned (another report calls them "co-owners," of which more later), gave, on 4th October, 1955, their tenant the requisite six months' notice to terminate his tenancy, the notice to expire on 6th April, 1956. Such a notice has, by the Landlord and Tenant Act, 1954, s. 25 (6), to state "whether the landlord would oppose an application . . . for the grant of a new tenancy and, if so, also . . . on which of the grounds mentioned in s. 30 . . . he would do so." The notice said "that on the termination of your tenancy we intend to demolish and reconstruct the whole of the premises comprised in your holding," this statement corresponding to the ground set out in s. 30 (1) (f): "on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises." (The adjective "whole" is added in Note 4 of the Statutory Notice to Terminate: Form 7.)

The tenant made an application for a new tenancy (s. 29) which was heard by the county court on 30th January, 1956, and the evidence showed that what was intended to be done would not affect one wall at all and that another was to be left standing though a window was to be bricked up; and part of the ceiling was to be left as it was.

Upholding the decision of the county court judge, the Court of Appeal held that the notice had sufficed. Denning, L.J.'s reasoning was that it was sufficient for a landlord to specify the particular paragraph on which he relied (there are seven such paragraphs) and that, by analogy with pleadings, no harm was done by alleging more than could be established: the lesser facts which were sufficient for the purpose in hand could be relied upon. Hodson, L.J., likewise reasoned that the greater included the less; all that the landlord has to do is to indicate the grounds, in that case para. (f), and he is not obliged to sub-divide it. One might compare *Re Digby and Penny* [1932] 2 K.B. 491 (C.A.): reasons for notice to quit agricultural holding sufficiently expressed by referring to paragraph.

Morris, L.J.'s judgment, however, contains a suggestion that a landlord, while he may discard (as was the case), may not add to what he has asserted. It may seem that the successful raising of such a technical point would be even more difficult; if a landlord intends to demolish premises, his making good an allegation that he merely intends to demolish a substantial part would not be inconsistent with an intention to demolish

the rest; but what is important is that the paragraph concludes with: "and that he could not reasonably do so without obtaining possession of the holding." This requirement is obviously likely to play a far more important part in cases in which reconstruction without demolition, or demolition or reconstruction of a substantial part, is contemplated than in cases in which demolition of the premises is planned. It would be difficult to find a firm of contractors who would undertake complete demolition without being given possession!

"Continuation" of intention

The course taken by events, having regard to the decision in *Betty's Cafés, Ltd. v. Phillips Furnishing Stores, Ltd.* [1956] 3 W.L.R. 1134; 100 Sol. J. 946 (C.A.) (see p. 78, *ante*), is of some interest.

For the landlords, when notice to terminate was served and when the originating application for a new tenancy was entered, were two brothers; one of these died before the answer was put in, and that answer was put in by the surviving brother and the executors named in the deceased's will—who had not yet proved it. Nor had probate been granted when the application was first heard, on which occasion the surviving landlord and one of the executors (who was the deceased's son) both testified to their intention to reconstruct the premises. (They had sought to file an answer embracing all para. (f), but were not allowed to). The judge adjourned the hearing to enable the executors to prove the will before he gave judgment refusing the tenant's application.

Denning, L.J., considered that it was right that the judge should adjourn the hearing, as he could not enter judgment till probate had been obtained; but he also held, for reasons which I will discuss presently, that what really mattered was the surviving brother's intention at the date of the first hearing; and when rejecting an argument based on the will not having been proved, doing so by reference to the principle of relation back, he prefaced his remarks by: "Secondly, even if the intention of the executors was material . . ." But Hodson, L.J., observed in his judgment that the executor had deposed that he intended to *continue* the intention which had been formed by his predecessor; and while this was no doubt accurate, I do not think that the learned lord justice meant to imply that continuity was an essential requirement. For in *Betty's Cafés, Ltd. v. Phillips Furnishing Stores, Ltd.*, the court held (by a majority) that what matters is the intention at the date of the hearing; in effect, a landlord may

announce his intention first and form it afterwards. To be strictly accurate then, the important point (if the executor's intention mattered) was that it should be identical with that specified in the notice to terminate.

Parties

As everyone who might answer to the definition of "landlord" in s. 44 ("the owner of that interest in the property comprised in the relevant tenancy which *for the time being* fulfils the following conditions, etc. . .") satisfied the court of his intention to reconstruct, the only result could be dismissal of the application; but there may be occasions when the question whether the executor of a "co-owner" need be joined will be a vital one, and for this reason I would draw attention to a curious incompleteness of information about the ownership of the interest.

The report used calls the original landlords "joint owners"; another which I have seen refers to them as "co-owners," also stating that one of them—the one who died before the hearing—was entitled to a two-thirds share. Then, Denning, L.J., is said, in both reports, to have described the surviving brother as "the legal landlord." "He and his deceased brother had been joint owners, and when the deceased brother died the surviving brother became in law the sole owner. He was a trustee, no doubt, but in law he was the sole legal owner, and his intention was all that mattered." Hodson, L.J., spoke of him as "the survivor of the joint landlords on whom the legal tenancy devolved."

The position of a survivor of joint tenants, especially in connection with his right to sell without appointing a new trustee, has frequently been discussed in this journal in the past few years, and was reviewed at length by "S" in our issue of 29th December last (100 Sol. J. 957). And it is interesting that the position appears to be that, if the two brothers in *Biles v. Caesar* were joint tenants, then, though the survivor might not have been able to effect a sale without such concurrence, he could fairly be described as a trustee himself; in that case, however, it is difficult to see why the executors were joined. But, if it is true that he held a one-third interest, there would surely not have been a "joint tenancy" and he would not have been "sole owner by survivorship"; nor, I would submit, would he have been *the* legal owner of that interest in the property which for the time being, etc., and it would follow that his particular intention was not all that mattered.

R. B.

THE SOLICITORS ACTS, 1932 TO 1941

On 13th December, 1956, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that GERALD LEBOR, of No. 199, Piccadilly, London, W.1, and of No. 2, Colberg Place, London, N.16, be suspended from practice as a solicitor for a period of one year from 24th January, 1957, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On 17th January, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of ERIC SIDNEY CLAFF, formerly of Grove Chambers, Leopold Grove, Blackpool, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 17th January, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of JOHN HERBERT PASHLEY, formerly of No. 15,

Bond Street, Leeds, 1, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 17th January, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that JOHN BRIAN WILDING, of No. 4, Quex Road, Kilburn, London, N.W.6, be suspended from practice as a solicitor for a period of six months from 1st February, 1957, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

On 17th January, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon STANLEY MERVYN GIBSON, of No. 3, The Quadrant, Richmond, Surrey, a penalty of £100, to be forfeit to Her Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

PENSIONS FOR WIDOWS OF OFFICERS OF THE ARMED FORCES

The Author is Lieut.-Colonel J. B. Girling, Assistant General Secretary of the Officers' Pensions Society

I HAVE been inspired to write the following notes on widows' pensions by the volume of correspondence I have received from solicitors in all parts of the country. This reveals the fact that a surprisingly large number of legal firms have little knowledge of the procedure to be adopted, or the departments which should be addressed, when an officer of one of the fighting services dies and leaves a widow who may be eligible for a pension.

As a preface, I may say that the Officers' Pensions Society was founded in 1946 to procure improvements and increases in retired pay and pensions of officers of the three armed services, and of their widows and dependants; also to promote in every way their interests and represent their individual problems. Membership is open to retired officers, to wives and relatives of serving and retired officers, and to widows and relatives of deceased officers of any of Her Majesty's forces. The Society now numbers over 11,000.

On the death of an officer member coming to notice, a letter is addressed to his widow conveying the sympathy of the Society and offering her assistance in any difficulties she may encounter in connection with her application for a pension. A printed form giving instructions regarding procedure and the main conditions governing the award is enclosed with the letter of sympathy.

So much for the activities of the Society. I will now pass on to the different types of pension and the basic conditions governing each type of award.

An "ordinary" pension may be granted under Royal Warrant to the widow of a retired officer who has a minimum of twenty years' service and who was, at the time of his death, in receipt of retired pay, provided the marriage took place before the officer's retirement or, if he was re-employed on full pay during an emergency and his retired pay was reassessed as a result of that service, before his reversion to retired pay. Children's allowances may be granted for children under the age of eighteen years, or over that age if they are still undergoing full time education at a recognised school or university.

An "attributable" pension may be awarded to the widow of an officer who is killed, or dies as a result of active service, or of an officer who is in receipt of disability pension and who dies as a direct result of the disability for which he is drawing pension. Children's allowances are also payable under similar conditions to those applying to ordinary pensioners' children. The "twenty years' service" rule does not necessarily operate in the case of such pensioners.

The dependants of officers of the Indian Army and Royal Indian Navy who were contributors, during their service and after retirement, to one or other of the following funds are also eligible for pensions:—

Indian Military Service Family Pensions Fund.
Indian Military Widows and Orphans Fund.

Pensions from these funds are granted to the widows and children of all such contributors, in addition to their Royal Warrant pensions. These funds are administered under the Commonwealth Relations Office.

Ordinary pensions are awarded, and payable, by the service department concerned, and attributable pensions are paid by the Ministry of Pensions and National Insurance. The rates vary in accordance with the substantive rank of the officer on his retirement.

Applications for ordinary and attributable pensions should be made to the appropriate department as follows:—

| | |
|--------------------------------------|---|
| Royal Navy | The Secretary of the Admiralty, N.P. Branch, London, S.W.1. |
| Army | The Controller (F.3.W.), The Army Pensions Office, London Road, Stanmore, Middlesex. |
| Royal Air Force | The Air Ministry, F.7(c), Kingsway, London, W.C.2. |
| Indian Army and Royal Indian Navy | The Controller of Pensions Funds, Commonwealth Relations Office, 4 Central Buildings, Matthew Parker Street, London, S.W.1. |

Applications for attributable pensions for widows of officers who have not held regular commissions should be made to:—

The Ministry of Pensions and National Insurance,
Norcross, Blackpool, Lancashire.

I do not claim to have covered more than a very small field in these notes, as it is not possible accurately to summarise the many regulations regarding eligibility for pensions in such a brief article. For instance, certain categories of officers have certain reserved rights: the widows of officers who died while serving after 1st September, 1950, may be eligible for a gratuity, the amount of which will vary according to the date of death and the rank of the officer, etc. It is hoped, however, that the foregoing may be of assistance to solicitors who are consulted by recently bereaved widows, many of whom have no idea of what their future is likely to be.

The writer will be very pleased to give the benefit of his experience in these matters to any reader who may require assistance in advising his clients. Letters should be addressed to him at:—

The Officers' Pension Society, Limited,
171 Victoria Street, London, S.W.1.

Mr. T. VIVIAN LEWIS has been appointed solicitor to the Caernarvonshire Baptist Association in succession to Dr. William George.

Mr. GERARD GUSTAVE LIND-SMITH has been appointed deputy chairman of the Court of Quarter Sessions for the County of Chester.

Mr. GEOFFREY MORRIS, assistant solicitor to Dudley Corporation, has been appointed assistant solicitor to Swansea Corporation.

Mr. J. TYE has been appointed an assistant Official Receiver in the Bankruptcy (High Court) Department of the Board of Trade.

HERE AND THERE

ENIGMATIC FEATURE

IT is a curious fact that the nose, the central feature of every adored face, has been conspicuously neglected in the literature of love and in the lofty sentiments which inspire it. One knows the shell-like ear, the damask cheek, the ruby lips, the sparkling eyes, the teeth of pearl, the pale brow spirit-pure. But the nose? No poet ever apostrophised it: "Go, lovely nose! Tell her that wastes her time and me . . ." If a man kisses the nose of his beloved it is playfully rather than with passionate intensity. It shares with her eyebrows the not very easily explicable quality of never being taken very seriously. The eyebrow's most notable appearance in literature is Jaques's satirical reference to the lover's "woeful ballad made to his mistress's eyebrow." Perhaps it is because neither the eyebrow nor the nose has any very well defined function in the language of the affections. The lip can curl contemptuously, but it can also smile invitingly. The eye can flash, but it can also beam. But there's nothing much the eyebrow can do except raise itself quizzically and that is apt to be disconcerting, while the chief accomplishment of the nose in the way of self-expression is either to sniff in disgust or elevate itself in disdain. There would be no very sinister psychological deductions to be made if one were to admit that the first image which the word "nose" suggested to one was Cyrano's monumental proboscis, rather than some more conventionally aesthetic image. And yet Venus de Milo can lay down her arms with less essential loss of character than if she mislaid her nose. It was therefore particularly interesting lately to see the courts called on to assess the damage suffered by a lady of position by having had her nose bent slightly out of true in a motor car collision. Mr. Justice Hallett, from whose court the glamour of a particularly radiant visitation from the film and entertainment world has only just faded, was well qualified to consider the question, which was: Does the detriment of having suffered a damaged nose increase as one ascends the social scale? It was a matter on which the court might have derived great assistance by the calling of Miss Nancy Mitford as an expert witness to define with her usual trenchant clarity the line between U and non-U in the matter of noses. However, unaided by such testimony, the learned judge in effect held that there was nothing exclusively U about a straight nose and that social degrees at any rate were not a factor in the calculation of damages. In short, the nose of a society hostess does not stand in the same relation to her as his finger to a pianist. Indeed, the degree of damage suffered might well be all the other way. Every woman's face is her fortune, but to the poor girl whose face was her only fortune quite a small diminution of that fortune might be a far more severe blow than it would be to a more richly favoured lady.

THE ZOO AT THE COURTS

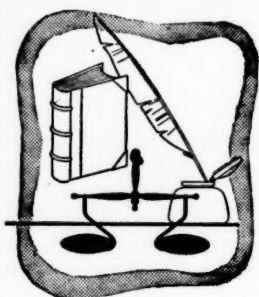
IT is always intriguing to see the lawyers setting about the task of rationalising the unpredictable behaviour of animals and fitting them as neatly as possible into the social scene and the all too orderly scheme of jurisprudence. Mechanised as we are, we have less frequently than formerly the pleasure of seeing the long, appealing faces of horses pushed into litigation, while the appearances of elephants at the Royal Courts of Justice have even in our imperial hey-day been all too rare. It is therefore all the more remarkable that both a horse case and an elephant case should have come before the High Court in the same week. The horse was a film horse given a costume walking-on part in a production about Robin Hood. Gorgeous in mediæval trappings it should have been proud to cut a splendid figure, but stage fright gripped it as it approached the camera (or perhaps it simply wanted to be alone) and it bolted, eventually getting rid of the stunt actor on its back. When he recovered from his injuries he sued the film company for negligently miscasting an unsuitable horse. Time was when in such a case half the judges on the Bench would have been ready to mount the horse and test its quality. I think the last judge to try such an experiment was the late Mr. Justice Lewis, who in the course of determining an action over a horse had it brought into the Law Courts' quadrangle and mounted it. There are still two or three notable horsemen among the judges, but the law is a lot more pedestrian than it was. The case of the elephants and the midgets in the circus booth demanded far more recondite knowledge. Mr. Justice Devlin is an experienced farmer in Wiltshire and as such must know the secrets of many of the beasts of the field, but an elephant, for all its strength and intelligence, rarely finds employment in English agriculture and one cannot off-hand recall any High Court judge who could, with the casual confidence of Mr. Justice Lewis, have ordered the Bertram Mills elephants to be brought to the Law Courts' quadrangle, so that he might put them through their paces. A judge who formerly held office in India might have been ready and willing to oblige, perhaps Sir Leonard Stone, who was Chief Justice of Bombay, but he is far away holding judicial office in Lancashire. Nevertheless, Mr. Justice Devlin handled the elephants judicially with a characteristically masterful assurance. He held that, though the law compelled him to assess damages as though the defendants had let loose a wild elephant in a fun fair, Bullu (the elephant in question) was no more dangerous than a cow and reacted in the same way a cow would have done when irritated by a small dog. So a willing elephant need not despair of finding employment on at least one Wiltshire farm.

RICHARD ROE.

"THE SOLICITORS' JOURNAL," 7th FEBRUARY, 1857

On the 7th February, 1857, the SOLICITORS' JOURNAL answered an article in the *Westminster Review* which had suggested that solicitors entrapped "hapless victims" to become involved in ruinous Chancery proceedings: "The notion of a solicitor 'taking advantage of individual weakness' to originate proceedings out of which 'he knows with certainty he will have a fortune' is a ludicrous exaggeration. . . . The fact is that, even under the new scale of costs, . . . it is very doubtful whether a solicitor will find it worth his while to undertake Chancery business where the subject-matter of the suit is under the value of £1,000. Perhaps he may not be willing to refuse such business when . . . the parties interested are in other respects valuable clients. But to talk

of solicitors 'worming their way into houses' and seeking for 'discrepancy of temper and principles' in the members of a family in order to embroil them in a Chancery suit is to propagate fables too monstrous even for the cheapest and coarsest romances. . . . We shall not follow the reviewer into the details of the comparison he has drawn between the solicitor and the barrister. It is enough to say that he knows very little indeed of solicitors. . . . We believe . . . that when he has seen more of the actual working of legal business . . . he will recognise that the functions of the barrister and solicitor are different and that the interests of the client will be best promoted by employing each branch of the profession in its own particular sphere."



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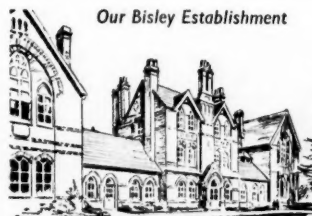
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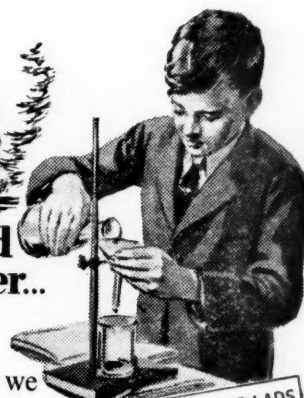
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Judicial Committee of the Privy Council

ROMAN-DUTCH LAW: FIDEI-COMMISSUM:
VALID ACCEPTANCE BY FIDUCIARIES FOR
FIDEI-COMMISSARIES

Abeyawardene v. West

Earl Jowitt, Lord Oaksey, Lord MacDermott, Lord Cohen,
Lord Keith of Avonholm

14th January, 1957

Appeal from the Supreme Court of Ceylon.

By a deed of gift in 1883 a husband and wife (Siman and Maria) gave land known as "The Priory" to their daughters (Cecilia and Jane) in equal undivided shares subject, *inter alia*, to a condition that the donees should not be entitled to sell, mortgage or otherwise alienate the property, and provided that after the death of the donees the land should devolve on their lawful issue, and in the event of any one of the donees dying without issue her rights in the property should devolve upon the surviving donee. The gift was accepted on behalf of the donees, who were then minors, by their brother-in-law and their two brothers jointly. Pursuant to a consent order of the court made in 1896 on a petition presented by the donees' parents, Siman and Maria, under the Entail and Settlement Ordinance, 1876, another property called "Sirinivasa" was in effect exchanged for "The Priory," which latter was reconveyed by the donees to their father. By another conveyance of the same date, Cecilia conveyed for Rs. 45,000 to her father her undivided half of "Sirinivasa." Thereafter, in 1900, Jane and her father, who then held "Sirinivasa" in undivided moieties, partitioned the property. In 1905 Jane conveyed for Rs. 75,000 her divided share of "Sirinivasa" to her father, who, in 1907, conveyed for Rs. 175,000 the whole of "Sirinivasa" to his son James. Under the will of James, the land passed to trustees for charitable purposes and was divided by them into lots. The present respondent's father became the purchaser of two lots—the subject-matter of this action—which he gifted to the respondent. The appellant, and his two brothers (now dead), were the children of Jane, and they claimed that the deed of 1883 created a valid *fidei-commissum* of "The Priory" enuring for the benefit of the issue of Cecilia and Jane as *fidei-commissaries*; that the same *fidei-commissum* became attached to the substituted property "Sirinivasa"; that no dealing with the property by Jane could thereafter revoke or fetter their *fidei-commissary* interest as Jane's issue, and that they were therefore entitled to the half-share allotted to Jane on the partition of 1900, which half-share comprised the land gifted to the respondent. The Supreme Court of Ceylon, reversing the judgment of the District Court of Colombo, gave judgment in favour of the present respondent.

LORD KEITH OF AVONHOLM, giving the judgment, said, first, that the gift in the deed of 1883 was validly and sufficiently accepted on behalf of the minor fiduciaries, Cecilia and Jane, by their brother-in-law and two brothers—three of their nearest male relations other than their father, the donor (*Francesco v. Costa* (1889), 48 S.C.C. 189, and *Lewishamy v. De Silva* (1906), 3 Bal. 43). There remained the question whether the acceptance by Jane and Cecilia was an acceptance for their children the *fidei-commissaries*. That was one of the major issues between the parties. If there was no acceptance for the *fidei-commissaries* the gift to them was revocable in the lifetime of the donors at any time before their acceptance, and there was no doubt that the conduct of the donors and the fiduciaries in the various transactions would amount to such revocation. In their lordships' opinion, the acceptance by the fiduciaries, Cecilia and Jane, was an acceptance for their children the *fidei-commissaries*. There was therefore an irrevocable *fidei-commissum* of "The Priory" in favour of Jane's children by virtue of the gift of 1883. [In reaching that conclusion the judgment considered and examined the views of early text-book writers on Roman-Dutch law, including Perezius's *Praelectiones* (1653), Bk. VIII, Tit. LV, para. 12, and Sande's *Treatise on Restraints on Alienation* (1633) (Webber's translation), Pt. III, ch. V, paras. 10 to 15, and, *inter alia*, the cases of *Perera v.*

Marikar (1884), 6 S.C.C. 138, *Soyza v. Mohideen* (1914), 17 N.L.R. 279, *Ex parte Orlandini* S.A.L.R. [1931] O.P.D. 141 and *Crookes, N.O. v. Watson* 1956 (1) S.A.L.R. 277.] "Sirinivasa," when received in exchange for "The Priory," must be taken to have been held in terms of the original *fidei-commissum* by virtue of s. 8 of the Entail and Settlement Ordinance, 1876, which provided that "any property taken in exchange for any property exchanged . . . shall become subject to the same . . . *fidei-commissum* . . . as the property for which it was given in exchange." Lastly, on the assumption that the respondent's father was a bona fide purchaser for value without notice of any defect in his title, that could not avail the respondent, for under the law of Ceylon the rights of *fidei-commissaries* prevailed over those of bona fide purchasers; English doctrines of law had no play in this sphere (*Abdul Hameed Sitti Kadija v. De Saram* [1946] A.C. 208). Appeal allowed. The respondent must pay the costs of the appeal to the Board and of the appeal to the Supreme Court of Ceylon.

APPEARANCES: *Prill, Q.C.*, *J. Stephenson* and *L. Kadirgamar* (*Darley, Cumberland & Co.*); *Gahan, Q.C.*, *Wilberforce, Q.C.*, and *Bernstein* (*Lee & Pembertons*).

[Reported by CHARLES CLAYTON, Esq., Barrister at-Law] [2 W.L.R. 281]

CRIMINAL LAW: CONSPIRACY: HUSBAND AND
WIFE: POTENTIALLY POLYGAMOUS MARRIAGE

Mawji and Another v. R.

Lord Oaksey, Lord Tucker, Lord Cohen, Lord Keith of Avonholm,
Lord Somervell of Harrow

15th January, 1957

This was an appeal from a judgment of the Court of Appeal for Eastern Africa dated 1st August, 1955, affirming a judgment of the High Court of Tanganyika which had dismissed the appellants' appeals from their convictions in the District Court of Dar es Salaam on a charge of conspiring together to obstruct, prevent or defeat the course of justice by concealing a wall-clock which they well knew was required for the purpose of an inquiry into a criminal offence. They had each been sentenced to one year's imprisonment. The appellants were lawfully married in accordance with the rules of the Khoja Sect, a sub-sect of the Shia Mohammedans, and were living together in a common matrimonial home under conditions in all respects similar to a monogamous union, and the main question in this appeal was whether the doctrine of English criminal law that a husband and wife cannot be guilty of conspiracy was applicable in the circumstances to the appellants.

Section 110 of the Penal Code of Tanganyika provided that: "Any person commits a misdemeanour who—(a) conspires with any other person to . . . obstruct . . . the course of justice." And by s. 4: "This Code shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed . . . except as may be otherwise expressly provided, to be used with the meaning attaching to them in English criminal law and shall be construed in accordance therewith."

LORD SOMERVELL OF HARROW, giving their lordships' reasons for having, on 4th December, 1956, allowed the appeal, said that there were two issues: first, whether under the provisions of the law of Tanganyika the rule of English criminal law that husband and wife could not be guilty of conspiracy was applicable in Tanganyika; secondly, whether, if it was, it applied to the appellants whose marriage was potentially polygamous. On the first question the point was whether the rule was incorporated into s. 110 (a) of the Code by s. 4. Their lordships were of opinion that the rule was incorporated into s. 110 (a). The words "conspiracy" and "conspires" in English criminal law were not applicable to husband and wife alone: the words "other person" in s. 110 (a) if English criminal law was applied to their "interpretation" or "meaning" could not in that context include a spouse. On the second point, it was clear, of course, that the marriages primarily contemplated by the rule in England

were monogamous marriages, but the rule being now part of the criminal law of Tanganyika their lordships were of opinion that it applied to any husband and wife of a marriage valid under Tanganyika law, and it was not suggested that the appellants' marriage was not in that category. Their lordships had, therefore, humbly advised Her Majesty that the appeal should be allowed and the convictions on the conspiracy count quashed and the sentences set aside.

APPEARANCES: *Alan Campbell* (*Theodore Goddard & Co.*); *James Stirling*, Q.C., and *D. A. Grant* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 277]

Court of Appeal

INCOME TAX: COMPANY PROFITS: WHETHER SALE OF "KNOW HOW" A TAXABLE TRANSACTION

Evans Medical Supplies, Ltd. v. Moriarty
(Inspector of Taxes)

Lord Evershed, M.R., Birkett and Romer, L.JJ.

13th December, 1956

Appeal from Upjohn, J. ([1956] 1 W.L.R. 796; 100 Sol. J. 471).

A company, Evans Medical Supplies, Ltd., which carried on the business of manufacturing chemicals and wholesale druggists, in October, 1953, entered into an agreement with the Government of Burma by which the company agreed to assist the Government in the establishment and operation of a pharmaceutical industry. Under the terms of the agreement the company was to supply technical data and designs for the erection of the factory and the installation of machinery required for the manufacture of the pharmaceutical products. They were also to disclose to the Government the secret processes used by them in the preparation, storage and packaging of the various pharmaceutical products, the products themselves being of known composition. These processes had never been disclosed before to anyone else, and during the seven years' currency of the agreement the company agreed not to disclose them to anyone else in Burma. During the currency of the agreement the company further undertook to manage the factory and whilst training native personnel to provide the necessary staff meanwhile. The company was permitted to continue its agency in Burma, but that agency would become of less value as the Burmese Government established their own industry. The consideration for the agreement was a lump sum payment of £100,000, together with an annual fee of not less than £25,000 for the obligation to operate and manage the factory during the currency of the agreement. The company appealed against an assessment to income tax under Case I of Schedule D for 1954-55, which included the sum of £100,000, but the commissioners dismissed the appeal. Upjohn, J., reversed the decision and the Crown appealed.

LORD EVERSLED, M.R., said that on the true construction of the agreement, the lump sum payment of £100,000 was made in consideration of the obligation undertaken by the company to give to the Government of Burma the necessary information to set up in that country a pharmaceutical industry, as distinct from the further obligation of operating and managing the factory when it had been established, for the period of the agreement. Upjohn, J., had held that there was no evidence to support the commissioners' finding that the transaction fell within the scope of the company's continuing and existing business operations at the time when it was made, but he (his lordship) was unable to accept that. He did, however, agree with the judge that the question was one of fact exclusively, unlike the question in *Edwards v. Bairstow and Harrison* [1956] A.C. 14, which had involved the construction of the statutory formula "an adventure in the nature of trade." The second question was whether the lump sum payment was capital or income in the hands of the company. After referring to *British Dyestuffs Corporation (Blackley), Ltd. v. Inland Revenue Commissioners* (1924), 12 Tax Cas. 586; *Withers v. Nethersole* (1948), 64 T.L.R. 157, and *Handley Page v. Butlerworth* [1938] 2 K.B. 482, his lordship said that if the disclosure of the secret processes was only incidental to giving advice and instruction for completing the factory, no sale or disposition of a capital asset could have been involved, but there was no evidence as to whether

that was so. The case should be referred back to the commissioners to give the company an opportunity of showing that that was not so, and that a considerable part of the lump sum payment ought to be apportioned to the disclosure of secret knowledge and processes of a type analogous to the subject-matter of letters patent and copyright, which were assets of a capital nature.

BIRKETT and ROMER, L.JJ., agreed. Case remitted to commissioners.

APPEARANCES: *Sir Frank Soskice*, Q.C., *Sir Reginald Hills* and *Montagu Temple* (*Solicitor of Inland Revenue*); *John Senter*, Q.C., and *Anthony Barber* (*Whitfield, Byrne & Dean*, for *Whitley & Co.*, Liverpool).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 288]

SOLICITORS' COSTS: SOLICITORS' REMUNERATION (REGISTERED LAND) ORDER, 1925

In re Taxation of Costs; In re A Solicitor

Singleton and Jenkins, L.JJ.

19th December, 1956

Appeal from Pearson, J.

The owner of registered land in London entered into a contract to sell it and the contract and conditions of sale were drawn up by his then solicitors. Before the completion of the sale he changed his solicitors, who made some necessary amendments to the conditions of sale and carried out the completion of the contract and the conveyance to the purchaser. They then sent in a bill of costs amounting to £145 5s. 4d., which included a scale fee amounting to £53 2s. 6d. under the provisions of the Solicitors' Remuneration (Registered Land) Order, 1925, para. 1 (d). On the application of the owner the bill of costs was referred to the taxing master, who decided that a scale fee was not payable because the contract of sale had been prepared and completed by the vendor's original solicitors, who had been paid for their services in that respect. Pearson, J., on appeal by the respondent solicitors, affirmed the decision of the taxing master, who had also assessed the value of the services at the global figure of £60. The solicitors appealed.

SINGLETON, L.J., said that he could not agree with the taxing master that the £53 2s. 6d. charged as a scale fee had not been earned. There might be occasions when the parties themselves arrived at a contract, and the property was transferred within (d) of para. 1 of the Order, and the solicitors would still be entitled to the scale charge. In this case, though the solicitors did not prepare the contract, they had to consider its terms and the terms of the conditions of sale. Indeed, they had had to undertake a certain amount of correspondence and additional work because the conditions of sale were not in order. On a strict reading of para. 1 of the Order of 1925 they did the main part of the work mentioned in the Order, which entitled them to the scale charge. Whether they came within that was a question of law, and in his lordship's view they did and were, therefore, entitled to the scale charge. But his lordship was concerned and surprised—though it did not concern the court here—that on a matter of this kind the solicitors' bill should have been considerably more than twice the amount which an experienced taxing master thought would be the right amount to cover all the work done by them. It might be that the question of scale fees was worthy of examination. But on the sole question before the court, as to whether the solicitors were or were not entitled to the scale fee on the first item in their bill, the appeal should be allowed.

JENKINS, L.J., though concurring in the result, said that it should not be thought that the court was deciding that in every case any solicitor who took any part in the business leading up to the completed transfer of registered land must necessarily be entitled to the whole of the scale charge. The principle stated in *In re Lacey & Son* (1883), 25 Ch. D. 301, applied, in his lordship's view, to remuneration in respect of registered land as it did to remuneration with respect to unregistered land, namely, that to earn the scale charge the solicitor must do substantially all the work which the charge was intended to cover.

Appeal allowed. Bill remitted to the taxing master.

APPEARANCES: *Leonard Halpern* (*Lesser, Fairbank & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 280]

Chancery Division**MARRIED WOMEN'S PROPERTY ACT, 1882:
INQUIRIES AS TO EXISTENCE OF PROPERTY
AND UNASCERTAINED DEBTS NOT MAINTAINABLE****In re Camkin's Questions**

Wynn Parry, J. 30th November, 1956

Adjourned summons.

The executors of the will of Florence Alethea Seager, who died in 1951, took out a summons under s. 17 of the Married Women's Property Act, 1882, in which her husband was the respondent. In questions 7, 8 and 9 of the summons in its original form the following questions were asked: 7. Whether the respondent was entitled to be paid out of the estate of his wife the sum of £5,000 in respect of moneys which he alleged she took from two boxes or any other sum in respect thereof. 8. All questions between the applicants and the respondent as to whether the respondent was indebted to the estate of his wife in respect of any and, if so, what sum in repayment of moneys loaned by her to the respondent for his business. 9. The question whether the respondent was entitled to be paid out of the estate of his wife (a) the sum of £260 5s. 9d. or any and, if so, what part of the said sum in respect of accounts which he alleged he paid on her behalf; and (b) the sum of £4,200 in respect of moneys which he alleged his wife had received in her capacity as book-keeper of his business but had wrongfully paid into her accounts at Barclays Bank, Ltd., and Westminster Bank, Ltd.

WYNN PARRY, J., refused to make any order on questions 7, 8, 9, as they stood, for reasons appearing in the judgment, and he allowed an amendment to the summons by substituting for those questions a new question, namely, to determine all questions between the applicants and the respondent as to the title to or possession of the net moneys standing to the credit of his wife at Barclays Bank, Ltd., and Westminster Bank, Ltd. He said that the case illustrated the inconvenience which was caused when this procedure was invoked in a case involving a series of questions, some extremely complicated, in which a mass of evidence, including four banking accounts, had had to be considered and analysed. In its original form the summons raised nine questions, all necessarily framed in general terms, which afforded the only indication of the issues to be debated, and did not circumscribe with precision the scope of such debate. These difficulties would be considerably mitigated, if not entirely removed, if power were given to the master, similar to that given to the registrar under the Companies Act, 1948, which allowed him, in the case of a misfeasance summons involving substantial or complicated questions, to direct points of claim and defence, and to make a full order for discovery; when such a procedure was adopted, the matter followed the course of a witness action. He (his lordship) felt that it would be in the interests of justice if such a power in the master were introduced. He had ruled that he was not prepared to make any order on questions 7, 8 or 9 as they stood, because in each case the claim, whether by the applicants or the respondent, was a mere money claim and involved, not merely a decision as to who was entitled to possession of property such as a fund shown to be in existence, but, as a preliminary, a search in the nature of an inquiry as to whether property existed on which the decision could operate. If a fund were shown to exist, no doubt the court would pronounce on the rights of the parties, as in *Rimmer v. Rimmer* [1953] 1 Q.B. 63; but where there was no property or identifiable fund on which the order under s. 17 could operate, proceedings under that section were inappropriate (see *Tunstall v. Tunstall* [1953] 1 W.L.R. 770). On an application under s. 17, the court had no jurisdiction to conduct an inquiry with a view to finding out whether or not property existed. Its jurisdiction was confined to deciding questions relating to property which, on the evidence before it, was shown to exist. Further, the court had no jurisdiction to entertain questions which, if resolved in favour of the party raising them, would only result in showing that a debt was owed to that party by the other party to the summons. [The judgment on the questions as raised by the summons was not relevant to this report.]

APPEARANCES: R. E. Megarry, Q.C., and L. H. L. Cohen (*Smiles & Co.*); F. D. L. McIntyre, Q.C., and Maurice Price (*John F. Chadwick*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [1 W.L.R. 255]

Queen's Bench Division**CRIMINAL LAW: INDICTMENT FOR MOTOR
MANSLAUGHTER: JURY ACQUIT AND
DISAGREE AS TO DANGEROUS DRIVING:
WHETHER LESSER OFFENCE TRIABLE AT
QUARTER SESSIONS****In re Shipton**

Lord Goddard, C.J., Hilbery and Ormerod, JJ.

17th December, 1956

Application for leave to move for mandamus.

The Road Traffic Act, 1934, provides by s. 34: "Upon the trial of a person who is indicted for manslaughter in connection with the driving of a motor vehicle by him, it shall be lawful for the jury, if they are satisfied that he is guilty of [reckless or dangerous driving] to find him guilty of that offence . . ." The defendant was indicted at assizes on a charge of manslaughter connected with the driving of a motor car. The jury, having acquitted him of manslaughter, were unable to agree on a verdict on the issue of dangerous driving. Thereupon the judge ordered the issue of dangerous driving to be tried at quarter sessions on the same indictment. The recorder refused to try the defendant on the ground that he had no jurisdiction to try an issue of dangerous driving on an indictment containing only one count for manslaughter. An application was made for leave to move for mandamus against the recorder.

LORD GODDARD, C.J., said that the section was entirely permissive; the jury, if they thought that the defendant was not guilty of manslaughter, might return a verdict of dangerous driving. There being no separate count for dangerous driving, the recorder formed the view that he had no jurisdiction to try an indictment for manslaughter, and in that he appeared to be right. The judge had refused an application to prefer a voluntary bill; it was possible that the defendant might have been able to plead *autrefois acquit* to such a bill. It was plain that the recorder had no jurisdiction, and the application must be refused. Application refused.

APPEARANCES: Sir H. Hyllton-Foster, Q.C., S.-G., and R. Winn (*Director of Public Prosecutions*).

[Reported by F. R. Dymond, Esq., Barrister-at-Law]

[1 W.L.R. 259]

**JUSTICES: REFUSAL TO ALLOW CROSS-EXAMINATION
OF CO-DEFENDANT: WHETHER APPEAL LIES
BY CASE STATED****Rigby v. Woodward**

Lord Goddard, C.J., Cassels and Lynskey, JJ.

16th January, 1957

Case stated by Reading justices.

The defendant was charged, together with another man, with unlawful and malicious wounding. At the hearing before the justices the co-defendant gave evidence that the defendant had hit the complainant but the justices, thinking it their duty to exclude from their minds evidence of one co-defendant tending to incriminate another, refused to allow the defendant's solicitor to cross-examine the co-defendant, and, considering the evidence of the complainant conclusive against the defendant, convicted him. The co-defendant was acquitted. The justices, on the application of the defendant, stated a case for the opinion of the High Court under s. 87 of the Magistrates' Courts Act, 1952, the question of law for the opinion of the court being whether, upon the facts stated by the justices, they had come to a correct determination and decision in point of law. On behalf of the defendant it was conceded that an application for an order of certiorari would have been a more suitable remedy, but it was submitted that, the justices having gone wrong in law in refusing to allow the cross-examination, an appeal lay by case stated, and the court had power under s. 6 of the Summary Jurisdiction Act, 1857, to quash the conviction.

LORD GODDARD, C.J., said that the matter came before the court in a very unusual way. Ordinarily speaking it would have been brought before the court on an application for an order of certiorari, on the ground that there had been a departure from the common principles of justice, and the court would then have had to consider whether the irregularity was such that the conviction should be quashed. By s. 87 of the Magistrates'

Courts Acts, 1952, a conviction of a magistrates' court might be questioned on the ground that it was wrong in law or in excess of jurisdiction by applying to the justices to state a case. It seemed to his lordship that the appellant did question the decision of the justices on the ground that it was wrong in law, because the conviction was not obtained in the ordinary and proper course of law. A radical departure from the well-known principles of justice and procedure made a decision given after that departure wrong in law. His lordship, having referred to s. 6 of the Summary Jurisdiction Act, 1857, said that there was no power to order a retrial in the ordinary sense of that expression. If the Divisional Court held that on a submission of no case to answer justices had been wrong in stopping the case they could be ordered to resume the hearing because they very likely had not heard the defence, but if the court were to send the case back for re-hearing, his lordship did not see how it could be dealt with, for they did not know where the co-defendant was. The court must answer the question of law in favour of the defendant and the conviction must be quashed.

CASSELLS, J., agreed.

LYNSKEY, J., agreeing, said that the justices had deprived the defendant of the right of obtaining certain evidence from the co-defendant; they had made an error which the court could not put right. Appeal allowed.

APPEARANCES: *H. B. Grant* (Martin & Nicholson, for *M. Owen Wellbelove*, Reading); *Paul Wrightson* (Sharpe, Pritchard & Co., for *G. F. Darlow*, Town Clerk, Reading).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 250]

SALMON AND FRESHWATER FISHERIES: SALMON DEPOSITED WITH FISHMONGERS DURING CLOSE SEASON FOR SALE AT ITS TERMINATION

Birkett v. McGlasson's, Ltd., and Another

Lord Goddard, C.J., Cassels and Lynskey, JJ. 16th January, 1957

Case stated by Carlisle justices.

The Salmon and Freshwater Fisheries Act, 1923, provides by s. 30 (1): "No person shall buy, sell, or expose for sale or have in his possession for sale any salmon . . . between 31st August and 1st February following." Between 16th and 26th January, 1956, twenty-one salmon lawfully caught by rod and line were deposited by various fishermen with the defendants, who were fishmongers, on the terms that if the fishermen did not require their return before 1st February the defendants should be at liberty to sell them on commission on behalf of the fishermen. At 8.30 p.m. on 31st January the defendants placed the fish on rail at Carlisle for sale in London under such circumstances that it was impossible for the fish to be sold before 1st February. At the hearing of informations preferred against the defendants the prosecutor contended that it was an offence for a person to have salmon in his possession during the close season for sale, whether the intention was to sell it before or after 1st February. The defendants contended that to constitute an offence it must be shown that they had the fish in their possession for sale before 1st February. The justices dismissed the information. The prosecutor appealed.

LYNSKEY, J., said that the construction contended for by the prosecutor was not correct. The subsection was concerned only with sales taking place or intended to take place before 1st February. On the facts, if there was possession at all, which was doubtful, there was no possession for sale during the close period. Appeal dismissed.

LORD GODDARD, C.J., and CASSELLS, J., agreed.

APPEARANCES: *G. Paull*, Q.C., and *J. G. Shorrocks* (Boxall and Boxall, for *Oglethorpe & Hough*, Keswick); *I. H. Morris Jones* (Charles Russell & Co., for *Harston & Atkinson*, Carlisle).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

[1 W.L.R. 269]

CONTRACT: GOODS TO BE SHIPPED FROM FOREIGN PORT: LIABILITY OF SELLERS ON REFUSAL OF EXPORT LICENCE

Peter Cassidy Seed Co., Ltd. v. Osuustukkukauppa I.L.

Devlin, J. 21st January, 1957

Case stated by an umpire.

By a contract embodying four transactions dated 16th September, 1953, sellers carrying on business in Finland

sold to an English company a quantity of ants' eggs, f.o.b. Helsinki, "Delivery: prompt, as soon as export licence granted." The first intimation that the buyers had had that an export licence would be required was contained in a letter from the sellers confirming the second transaction, and prior to the signing of the contract the sellers had assured the buyers that the obtaining of the licence would be a "pure formality." In fact, the sellers' application for an export licence, which they had made with reasonable diligence, was refused by the Finnish authorities, so that they were unable to ship and deliver the contract goods. It was admitted that it was the sellers' duty to apply for an export licence. The umpire held that the contract was made subject to an export licence being granted, but he made a number of alternative awards.

DEVLIN, J., said that if the contract had said nothing at all about obtaining a licence it was clear that some provision would have had to be implied into it as to whose duty it was to apply for a licence. It had been, in his lordship's view, rightly accepted that that was obviously the sellers' duty, and it was further necessary to imply a term as to what was the nature of that obligation. The person whose duty it was to apply might either warrant that he would get the licence—that was an absolute warranty—or that he would use all reasonable diligence to do so. Each case must be decided according to its circumstances and the question settled in the ordinary way with regard to implied terms. The clause here, "as soon as export licence granted," showed clearly that the assumption underlying the minds of both parties was that the export licence would be granted, and the only question was when delivery would be. If so, the sellers undertook an absolute obligation to do that which both parties assumed would be done sooner or later. His lordship thought that the true construction was that the sellers were saying: "We can get a licence but we cannot say just when we can get it, and therefore delivery must depend upon the time of getting it," and the proper conclusion was that the sellers were warranting absolutely that they would get a licence. His lordship said that he wished to make one further observation. The point in the present case was extremely short; the facts were not in dispute and the point of law was one which could not take very long to consider. It had in fact taken one and three-quarter hours, well under the time usually allotted to a short case. It was, therefore, interesting to see what proceedings had led up to it. The contract was made in September, 1953, and broken in October, 1953. The matter went before two arbitrators, who disagreed and appointed an umpire. No doubt there were many cases in which arbitration served a useful purpose, but this was not one of them. If time and again it was made manifest that business men preferred expensive and tortuous procedure to that which the court provided, the time might come when it would have to be considered if there was any value in the Commercial Court which had been provided for the City of London for the settlement of its legal disputes. Award in favour of buyers upheld.

APPEARANCES: *T. G. Roche*, Q.C., and *A. J. Bateson* (Thomas Cooper and Co.); *John Donaldson* (Richards, Butler & Co.).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 273]

COAL MINE: INSUFFICIENT VENTILATION: STOPPAGE OF FAN FOR MAINTENANCE: WHETHER MANAGER GUILTY OF OFFENCE

McCarthy v. Lewis

Lord Goddard, C.J., Cassels and Lynskey, JJ.

23rd January, 1957

Case stated by Osgoldcross (West Riding of Yorkshire) Justices.

The defendant was acting as manager of a coal mine when on Monday, 25th July, 1955, owing to insufficient ventilation, an accumulation of noxious gases took place at the coal face in No. 9's district as a result of which two men, one of whom died, were rendered unconscious. The mine was ventilated by means of one mechanical fan which the defendant had caused to be stopped for maintenance from 1 p.m. on Saturday, 23rd July, until 7 p.m. on Sunday, 24th July (a holiday week-end), a period of thirty hours during which there was no mechanical ventilation in the colliery. The seam at the colliery was not a gaseous seam and there had been

no previous trouble from gas. On the morning of Saturday, 23rd July, the defendant had posted a notice in his pit bottom office, where it could be seen by all the deputies, that the fan would be stopped during the week-end. The deputy in charge of No. 9's district did not on the morning of Monday, 25th July, carry out a pre-shift inspection although he knew that it was his duty to do so. The defendant had relied on the deputy to inspect the district before the start of work but had not taken any other steps to ascertain whether or not there was a concentration of noxious gases in the district. An information was preferred against the defendant under s. 29 of the Coal Mines Act, 1911, and the justices, who accepted the evidence of expert witnesses that the defendant, not having received any report from the deputy as to the presence of gas, was entitled to assume that he had inspected the district and had not found any gas, found as a fact that the defendant had taken all reasonable means to prevent the contravention of or non-compliance with s. 29 (1) within the meaning of s. 75, and dismissed the information. The prosecutor appealed.

(Section 29 (1) of the Coal Mines Act, 1911, provided that: "An adequate amount of ventilation shall be constantly produced in every mine to dilute and render harmless inflammable and noxious gases . . ." but no person shall be liable if the ventilation was interrupted in consequence of an accident. By s. 75 "any person who contravenes or does not comply with any of the provisions of this Part of this Act shall be guilty of an offence . . . and, in the event of any [such] contravention . . . or non-compliance . . . by any person whomsoever, the owner, agent and manager of the mine—shall each be guilty of an offence . . . unless he proves that he had taken all reasonable means . . . to prevent that contravention or non-compliance." By s. 102 (3): "Nothing in this Act shall render the owner, agent or manager of a mine liable to a penalty in respect of any contravention of or non-compliance with the provisions of this Act, if he proves that the contravention or non-compliance was due to causes over which he had no control and against the happening of which it was impossible for him to make provision.")

LORD GODDARD, C.J., reading the judgment of the court, said that s. 29 contained no provision allowing ventilation machinery to be stopped for maintenance or repair unless caused by an accident and it would seem therefore that there must be duplicate or other means of ventilating the shaft if the ventilation was provided by mechanical means, as must generally be the case, during such time as any repairs were being done. Although s. 29 did not say in terms upon whom the duty of seeing to the adequate ventilation was imposed, it was decided in *Atkinson v. Morgan* [1915] 3 K.B. 23 that the duty of providing sufficient ventilation was imposed on the manager, and if it proved insufficient it was no defence for the manager to say that he had appointed some other competent person to attend to it. As there was in the present case an accumulation of gas it would appear clear that the defendant did commit a breach of the provisions of the Act. His lordship, having considered s. 75 of the Act, said that as the duty of seeing that there was adequate ventilation constantly produced lay on the defendant, he was primarily and not vicariously liable for the failure, and that if the defendant had sought to excuse himself for the contravention it was s. 102 (3) (which the justices had not considered) and not s. 75 which would be material. The court did not, however, consider that it would be right to remit the case to the justices for them to consider whether the defendant could escape liability under s. 102 (3) because it would be for him to set it up, and it was quite clear that by no possibility could it be said that the contravention was due to causes over which he had no control and against which it was impossible for him to make provision. Section 29 required the ventilation to be continuous (except in the cases dealt with by the proviso), and it was clear that there was no continuous ventilation. It was not due to an accident but to the deliberate stoppage of the ventilation. It seemed clear that if there was only one fan some means must be found to ventilate continuously the workings, and if the manager stopped the fan and there was no other ventilation so as to prevent an accumulation of gas, an offence had been committed. The case must go back to the justices with an intimation that an offence was committed and there must be a conviction. Appeal allowed.

APPEARANCES: *Edmund Davies, Q.C.*, and *Roger Winn (Treasury Solicitor)*; *Geoffrey Veale, Q.C.*, and *R. Withers Payne (C. M. H. Glover, Divisional Legal Adviser, National Coal Board, Doncaster)*.

[Reported by Miss J. LAMB, Barrister-at-Law] [2 W.L.R. 300]

Probate, Divorce and Admiralty Division

DIVORCE: JURISDICTION: INJUNCTION AND ORDER TO RETURN BRITISH CHILDREN OUTSIDE JURISDICTION

Harben v. Harben

Sachs, J. 21st December, 1956

Summons by a wife for an injunction restraining the husband from removing the children of the marriage from Jersey and an order to deliver them up to her in England. The matter arose upon a wife's petition for divorce dated 6th December, 1956.

A husband of English nationality and domicile of origin kidnapped the three young children of the marriage on 2nd November, 1956, from the vicinity of the matrimonial home in Eire and took them to Jersey, where he alleged that he had acquired a domicile of choice. He entered an appearance under protest to the wife's subsequent petition for divorce and resisted her application for an injunction to restrain him from removing the children from Jersey and for an order that they should be delivered up to her in England. The husband filed a petition for divorce in Jersey on the ground of alleged adultery.

SACHS, J., described the allegations in the wife's petition as of a really serious nature, and said that, if the allegations of cruelty were established, they would go a long way towards substantiating the wife's statement in her affidavit in the present proceedings that the husband was unfit to have charge of the children. His lordship said that it had been conceded on behalf of the husband that the court had jurisdiction to deal with the application but only in fact exercised it in exceptional circumstances, but that it had been submitted that, while it could not be said that this court had not got jurisdiction to deal with the matter, yet as the children were in fact located outside the jurisdiction the court should not act, for it rarely indeed did so and then only in exceptional circumstances, which the present facts did not constitute. The authorities showed that the inherent jurisdiction of the High Court to deal with the custody of any child who was a British subject existed even if the child had been born out of allegiance, and irrespective of where the child might be physically located at the relevant times. It had been exercised irrespective of the fact that one parent was also resident out of the jurisdiction, and that there was no property of the child within the jurisdiction. It had been exercised even where the father was dead and the mother and child were both domiciled in a foreign country. The court could also act irrespective of the fact that the courts of the country where the child was located also had jurisdiction to make an order, although it assumed that the other court would act in a reasonable manner. Whether or not this court made an order in relation to a child outside the jurisdiction depended on the particular facts of the case; those facts had to be really exceptional before an order was made. His lordship rejected the contention that the wife should be unable to make her application since an issue as to domicile had been made. A wife whose children had been kidnapped should not necessarily be asked to follow the kidnapper to such part of the globe as he might state that he was selecting as his new domicile. In the very exceptional circumstances of this case the wife was justified and entirely reasonable in making her application to this court to deal with the matter at this particular stage. It had always been the practice of this court to ensure that a parent should not gain advantage by the use of fraud or force in relation to the kidnapping of children from the care of the other spouse; and in the present case three young children were involved. His lordship considered the counter-charges which had been made, and said that on the evidence there was nothing to deflect the court from its normal practice of restoring, so far as it could, the position to what it was before the husband kidnapped the children. It made no difference whether the children happened to be in a different country to their mother, or, as in this case, in the Channel Islands. The order of the court would be that the husband deliver the children into the care and control of the wife and that the wife should have their care and control until further order of the court, upon the wife's undertaking not to remove the children from the jurisdiction and upon her surrendering her passport to her solicitors. Injunction granted. Order for children to be delivered into the care and control of the wife.

APPEARANCES: *Roger Ormrod (Gregory, Rowcliffe & Co.)*; *Leonard Caplan, Q.C.*, and *John Syms (Gordon, Dadds & Co.)*.

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 261]

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time:—

Commonwealth Settlement Bill [H.C.] [31st January.
Housing Bill [H.L.] [29th January.

To consolidate the enactments relating to housing, with the exception of certain provisions relating to financial matters.

Liverpool Corporation Bill [H.L.] [31st January.

Magistrates' Courts Bill [H.L.] [31st January.

To make provision for persons charged with certain summary offences to plead guilty without appearing before the court, and as to the proof before the magistrates' courts of certain matters; and for other purposes connected with the purposes aforesaid.

Read Second Time:—

East Ham Corporation Bill [H.L.] [30th January.

London County Council (General Powers) Bill [H.L.] [29th January.

Milford Docks Bill [H.L.] [29th January.

Wakefield Corporation Bill [H.L.] [30th January.

In Committee:—

Cinematograph Films Bill [H.L.] [31st January.

Ghana Independence Bill [H.C.] [31st January.

Public Trustee (Fees) Bill [H.L.] [31st January.

B. QUESTIONS

MARLBOROUGH STREET MAGISTRATES' COURT

Asked whether steps could be taken to make conveniences available for use of witnesses, defendants and other members of the public who might have to spend protracted periods in the waiting hall at Marlborough Street Magistrates' Court, VISCOUNT HAILSHAM said that the Home Secretary was having immediate enquiries made to see what could be done within the limitations of the existing premises. [31st January.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Housing and Town Development (Scotland) Bill [H.C.] [29th January.

To make new provision with respect to contributions out of the Exchequer and by local authorities in respect of housing accommodation provided or improved in Scotland; to enable Scottish local authorities to provide housing accommodation and other developments in relief of the needs of districts other than their own; to make additional provision as respects Scotland for the making of payments in respect of unfit houses which have been well maintained, to provide as respects Scotland for the making and keeping by local authorities of registers of maximum rents of dwellings in respect of which improvement grants have been made, and for the simplifying of the procedure for the completion of the compulsory acquisition of land under certain enactments relating to housing; to amend certain provisions of the Housing (Scotland) Act, 1950; to extend section nineteen of the Town and Country Planning (Scotland) Act, 1945; and for purposes connected with the matters aforesaid.

Thermal Insulation (Industrial Buildings) Bill [H.C.] [30th January.

To make provision for the thermal insulation of industrial buildings; and for purposes connected therewith.

Read Second Time:—

Coal Mining (Subsidence) Bill [H.C.] [31st January.

In Committee:—

Customs Duties (Dumping and Subsidies) Bill [H.C.] [30th January.

Homicide Bill [H.C.] [29th January.

B. QUESTIONS

LUNACY AND MENTAL DEFICIENCY ACTS (LETTERS)

Mr. VOSPER said that every patient of a mental institution under the Lunacy and Mental Deficiency Acts had the right to send any letter unopened to—

(a) the Management Committee of the hospital or any member of the Committee;

(b) the Board of Control or any one of the Commissioners of the Board;

(c) the Lord Chancellor;

(d) the Minister of Health;

(e) any Judge in Lunacy;

(f) the Chancery Visitors or any Chancery Visitor;

(g) the person who signed the order for the patient's reception into the hospital or who placed the patient there;

(h) if a patient is resident under an order made on petition, the person on whose petition the order was made;

(i) in the case of a temporary patient the person who made the application for the patient's reception or, if such person is not a relative, to the relative named therein or to the person having authority to direct discharge.

Other letters might be examined by a medical officer or other responsible official. In case of doubt as to the propriety of their despatch, the decision was a matter for the discretion of the superintendent. [25th January.

LISTER V. ROMFORD ICE AND COLD STORAGE CO., LTD.

Asked whether, having regard to the fact that, as a result of *Lister v. Romford Ice and Cold Storage Co., Ltd.* [1957] 2 W.L.R. 158; *ante*, p. 106, most drivers of motor vehicles owned by their employers had been virtually deprived of the benefit of insurance and were thus committing daily offences against the Road Traffic Act, he would introduce remedial legislation, the ATTORNEY-GENERAL said he did not accept this view of the decision's effects, but the implications of the judgment were being studied. [28th January.

ROME CONFERENCE (LAW OF THE SEA)

Mr. IAN HARVEY said that the Government would be represented at the proposed conference to be convened in Rome in March, 1958, to examine the law of the sea and in particular the recommendations of the International Law Commission on that subject. [28th January.

CERTIFIED PERSONS (MAINTENANCE COSTS)

The ATTORNEY-GENERAL said that under an order of the court made by virtue of s. 117 of the Lunacy Act, 1890, money could be paid from the estate of a wife certified as insane towards her maintenance while detained without the request being made for a financial contribution from her husband. [29th January.

HIRE-PURCHASE AGREEMENTS (MOTOR VEHICLES)

Asked if the President of the Board of Trade would allow hire-purchase companies to extend payments due from owners of hire cars and trade vehicles, in view of the fact that petrol rationing had in many instances made it impossible for the purchasers to continue their payments, Mr. ERROL replied that he was advised that it was not a contravention of the hire-purchase control for companies to accept whatever payments a hirer could afford to make, so long as there was no variation of the original hire-purchase agreement. [29th January.

LEGAL ADVICE TO MENTAL PATIENTS

Mr. VOSPER stated that a patient in a mental institution who requested legal advice might seek it through his relations or friends or might be allowed to communicate directly for the purpose. [1st February.

CHILD OFFENDERS (COURT ORDERS)

Mr. BUTLER gave the following statistics for 1955:—

Number of children under 12 years of age found guilty in England and Wales of indictable offences 10,321
Number of children under 14 years of age found guilty of indictable offences and how they were dealt with:

| <i>Court order</i> | <i>Magistrates' courts in the County of London</i> | <i>All magistrates' courts in England and Wales</i> |
|---------------------------------|--|---|
| Absolute discharge | 165 | 2,057 |
| Conditional discharge | 595 | 5,609 |
| Probation order | 655 | 8,205 |
| Fine | 31 | 2,265 |
| Approved school order | 98 | 1,083 |
| Fit person order | 79 | 482 |
| Attendance centre order | 26 | 511* |
| Otherwise dealt with | 8 | 368 |
| Total | 1,657 | 20,580 |

[1st February.]

* Not all magistrates' courts outside the County of London are empowered to make attendance centre orders.

STATUTORY INSTRUMENTS

Airways Corporations (General Staff, Pilots and Officers Pensions) (Amendment) Regulations, 1957. (S.I. 1957 No. 87.) 1s.

Anglesey (Water Charges) Order, 1957. (S.I. 1957 No. 89.)

Colonial Air Navigation (Amendment) Order, 1957. (S.I. 1957 No. 99.) 5d.

County of Nottingham (Electoral Divisions) Order, 1957. (S.I. 1957 No. 119.) 5d.

East of Snaith — York — Thirsk — Stockton-on-Tees — Sunderland Trunk Road (Sheraton Diversions) Order, 1957. (S.I. 1957 No. 84.) 5d.

Education Act, 1944 (Commencement of Part III) Order, 1957. (S.I. 1957 No. 96 (C.2).)

Foreign Compensation (Poland) (Debts) (Amendment) Order, 1957. (S.I. 1957 No. 100.) 5d.

Foreign Compensation (Poland) (Nationalisation Claims) (Amendment) Order, 1957. (S.I. 1957 No. 101.) 5d.

Great Yarmouth Water Order, 1957. (S.I. 1957 No. 125.) 6d.

London Traffic (Prescribed Routes) (Deptford) Regulations, 1957. (S.I. 1957 No. 90.)

London Traffic (Prescribed Routes) (Paddington) Regulations, 1957. (S.I. 1957 No. 91.)

London Traffic (Prohibition of Cycling on Footpaths) (Swanscombe) Regulations, 1957. (S.I. 1957 No. 92.)

London Traffic (Unilateral Waiting) (Amendment) Regulations, 1957. (S.I. 1957 No. 93.) 5d.

Personal Injuries (Civilians) (Amendment) Scheme, 1957. (S.I. 1957 No. 116.) 5d.

Public Service Vehicles (Licenses and Certificates) (Amendment) Regulations, 1957. (S.I. 1957 No. 123.) 5d.

Retention of Cables, Mains and Pipes under Highways (Essex) (No. 1) Order, 1957. (S.I. 1957 No. 106.) 5d.

Retention of Cables, Mains and Pipes under Highways (Warwickshire) (No. 1) Order, 1957. (S.I. 1957 No. 107.) 5d.

Retention of Cables, Mains and Pipes Under Highways (Wiltshire) (No. 2) Order, 1957. (S.I. 1957 No. 108.) 5d.

Sierra Leone (Legislative Council) (Interpretation) Order in Council, 1957. (S.I. 1957 No. 98.) 5d.

Stopping up of Highways (Isle of Wight) (No. 1) Order, 1957. (S.I. 1957 No. 85.) 5d.

Stopping up of Highways (Kent) (No. 1) Order, 1957. (S.I. 1957 No. 109.) 5d.

Stopping up of Highways (Leeds) (No. 1) Order, 1957. (S.I. 1957 No. 110.) 5d.

Stopping up of Highways (London) (No. 7) Order, 1957. (S.I. 1957 No. 111.) 5d.

Stopping up of Highways (London) (No. 8) Order, 1957. (S.I. 1957 No. 112.) 5d.

Stopping up of Highways (London) (No. 9) Order, 1957. (S.I. 1957 No. 113.) 5d.

Stopping up of Highways (Middlesex) (No. 1) Order, 1957. (S.I. 1957 No. 81.) 5d.

Stopping up of Highways (Middlesex) (No. 2) Order, 1957. (S.I. 1957 No. 86.) 5d.

Stopping up of Highways (West Riding of Yorkshire) (No. 4) Order, 1957. (S.I. 1957 No. 82.) 5d.

Draft Teachers Superannuation (Army Education) Amending Scheme, 1957. 5d.

Draft Teachers Superannuation (Royal Air Force Education) Amending Scheme, 1957. 5d.

Draft Teachers Superannuation (Royal Navy Education) Amending Scheme, 1957. 5d.

Visiting Forces Act (Application to Colonies) (Amendment) Order, 1957. (S.I. 1957 No. 103.)

Wages Regulation (Paper Bag) (Amendment) Order, 1957. (S.I. 1957 No. 94.) 5d.

Wages Regulation (Perambulator and Invalid Carriage) (Amendment) Order, 1957. (S.I. 1957 No. 83.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. DENIS HICKS ROBSON, Q.C., has been appointed a Judge of County Courts for the districts of the Bedford, Ashby de la Zouch, Hinckley, Leicester, Loughborough, Market Harborough, Melton Mowbray, Stamford, Kettering, Wellingborough and Oakham County Courts. He will relinquish his post as Recorder of Middlesbrough.

Mr. P. N. DALTON, legal adviser to the High Commissioner for the Western Pacific and Attorney-General, British Solomon Islands Protectorate, has been appointed Attorney-General, Zanzibar.

Mr. W. A. DRISKELL has been appointed an assistant Official Receiver for the Bankruptcy District of the County Courts of Manchester and Salford and for the Bankruptcy District of the County Courts of Hanley and Stoke-upon-Trent, Crewe and Nantwich, Macclesfield, Newton, Shrewsbury and Stafford.

Mr. E. G. HARPER has been appointed an assistant Official Receiver for the Bankruptcy District of the County Courts of Ashton-under-Lyne and Stalybridge, Bolton, Oldham, Rochdale and Stockport, and for the Bankruptcy District of the County Courts of Preston, Blackpool, Blackburn and Burnley.

Personal Notes

Mr. Frank Henwood, managing clerk of Messrs. Beale & Co., solicitors, of Great Smith Street, Westminster, S.W.1, has been forced to retire owing to ill-health, after sixty-three years of loyal service.

Mr. Brian Godfrey McGuinness, solicitor, of Whitley Bay, North Shields and Newcastle-on-Tyne, was married on 24th January, at Whitley Bay, to Miss Joyce Hopping, of California, U.S.A.

Miscellaneous
DEVELOPMENT PLANS

CORNWALL COUNTY COUNCIL DEVELOPMENT PLAN

On 27th December, 1956, the Minister of Housing and Local Government approved, with modifications, the above-mentioned development plan. Certified copies of the plan, as approved by the Minister, have been deposited at the County Hall, Truro, the Western Area Planning Office, Alphington House, Alverton, Penzance, the Eastern Area Planning Office, Westbourne House,

Liskeard, and certified extracts of the plan, so far as it relates to the under-mentioned county districts, have also been deposited at the places mentioned in the schedule hereto. The copies or extracts of the plan so deposited will be open for inspection free of charge by all persons interested during normal office hours. The plan became operative as from 24th January, 1957, but if any person aggrieved by the plan desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the approval of the plan, he may, within six weeks from 24th January, 1957, make application to the High Court.

The schedule hereinbefore referred to

Local authority and address at which the plan will be on view

Western area :

Falmouth M.B.—Municipal Offices, Falmouth.
Helston M.B.—Corn Exchange, Helston.
Penryn M.B.—Municipal Offices, Penryn.
Penzance M.B.—Municipal Buildings, Penzance.
St. Ives M.B.—The Guildhall, St. Ives.
Camborne-Redruth U.D.—Council Offices, "Veor," Camborne.
St. Just U.D.—Council Offices, St. Just.
Kerrier R.D.—The Willows, Helston.
West Penwith R.D.—Council Offices, Chapel Street, Penzance.

Central area :

Bodmin M.B.—Municipal Offices, Priory House, Bodmin.
Fowey M.B.—Borough Offices, Fowey.
Lostwithiel M.B.—Municipal Offices, Fore Street, Lostwithiel.
Truro M.B.—City Library, Pydar Street, Truro.
Newquay U.D.—Municipal Offices, Newquay.
Padstow U.D.—Council Offices, Padstow.
St. Austell U.D.—Municipal Offices, St. Austell.
St. Austell R.D.—Trevarna, 12 Carlyon Road, St. Austell.
Truro R.D.—Rural Council Hall, River Street, Truro.
Wadebridge R.D.—Council Offices, Wadebridge.

Eastern area :

Launceston M.B.—Municipal Offices, Launceston.
Liskeard M.B.—Municipal Offices, West Street, Liskeard.
Saltash M.B.—The Guildhall, Saltash.
Bude-Stratton U.D.—The Castle, Bude.
Looe U.D.—Mechanics' Institute, Looe.
Torpoint U.D.—Council Offices, York Road, Torpoint.
Camelford R.D.—Council Offices, Camelford.
Launceston R.D.—Council Offices, 20 Western Road, Launceston.
Liskeard R.D.—Council Offices, Luxstowe House, Liskeard.
St. Germans R.D.—"St. Germans," Lower Port View, Saltash.
Stratton R.D.—Council Offices, 17 The Strand, Bude.

Note.—Copies of the above-mentioned documents are available for sale and may be obtained from the County Planning Officer, County Hall, Truro.

COUNTY BOROUGH OF HASTINGS DEVELOPMENT PLAN

Proposals for alterations and additions to the above development plan were on 17th January, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land adjoining Castle Street and Caroline Place. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Hall, Queens Road, Hastings. The copy of the proposals so deposited together with a copy of the plan is available for inspection free of charge by all persons interested between 9 a.m. and 5 p.m. from Mondays to Fridays and 9 a.m. and 12 noon on Saturdays of each week. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 16th March, 1957, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

LAW SOCIETY: HONOURS EXAMINATION

At the November, 1956, Examination for Honours of candidates for admission on the Roll of Solicitors of the Supreme Court, the examination committee recommended the following as being entitled to Honorary Distinction:—

FIRST CLASS

(In order of merit)

(1) Michael Jack Goodman, B.A. (Oxon); (2) Bryan Groves Roberts, B.A. (Cantab.).

SECOND CLASS

(In alphabetical order)

Alan Thomas Baker, LL.B. (Manchester); Philip Chody, B.A. (Cantab.); Anthony Edgar Cohen, LL.B. (Lond.); Peter Frank Halliwell, LL.B. (Manchester); David Malcolm Hallworth, B.A. (Oxon); Peter Charles Hellman, B.A. (Oxon); Lionel Levine, LL.B. (Lond.); Anthony Lynch, B.A. (Oxon); Henry Edward Markson, LL.B. (Durham); Richard Anthony Prior, LL.B. (Bristol); Ludwig Louis Schneider, LL.B. (Lond.).

THIRD CLASS

(In alphabetical order)

Freddy Apfel, LL.M. (Leeds); Richard John Arnold; Peter Artingstall, LL.B. (Manchester); Geoffrey Richard Munro Beadle, M.A. (Oxon); Peter Frederick Bilton; John Vincent Brasington; John Michael Carter, LL.M. (Liverpool); Mavis Ann Chipperfield; Sydney Morten Clayton, B.A., LL.B. (Cantab.); Michael Edward Coles; Elizabeth Moyra Foister, LL.B. (Lond.); Frederick James Hanson; Murray Edward Hardisty; Frederick James Thomas Holt; Noel Richard Housley, LL.B. (Sheffield); Barbara Hunt; John Francis Hurst; Herbert William James, B.A. (Cantab.); Michael Barry Jones; Robin Anthony Bertram Jones; Colum Thomas Kirk; Michael Harry Legge; Richard Stephen Moffat; John Vernon Moore; Edward Oldman; Thomas Gordon Penman; Kenneth Richardson, LL.B. (Durham); Ralph Reuben Saunders, LL.B. (Lond.); Anthony Brodie Smith; Raymond Speakman; Hyman Leon Sterling; Michael Warwick; Neville Helme White; James Osbourne Witherspoon; Brian Arthur Wrigley, LL.B. (Lond.).

The Council of The Law Society have accordingly given Class Certificates and awarded the following prizes:—

To Mr. Goodman—The Clement's Inn Prize—Value £48.

To Mr. Roberts—The Daniel Reardon Prize—Value £24.

The Council have given Class Certificates to the Candidates in the Second and Third Classes.

Ninety-one Candidates gave notice for Examination.

The Council of The Law Society has approved classes for articulated clerks to be started under the auspices of Flintshire Technical College for the purposes of s. 32 of the Solicitors Act, 1932. The classes will commence in September next, and will be held at Morfa Hall, Rhyl.

GATESHEAD RENT TRIBUNAL

The Gateshead Rent Tribunal moved from their office at 2nd Floor, Central Buildings, West Sunnyside, Sunderland, to 1 North Bridge Street, Sunderland, on 1st February, 1957.

OBITUARY

MR. A. G. T. BOSZORMENYI

Mr. Andre Gabor Tihamer Boszormenyi, solicitor, of Queen Street, Mayfair, W.1, died on 6th January, aged 49. He was admitted in 1947.

MR. W. R. GIBSON

Mr. William Reginald Gibson, solicitor, of Sunderland, and a former clerk to Sunderland County and Houghton-le-Spring magistrates, died recently. He was president of Sunderland Law Society in 1950 and was admitted in 1920.

SIR E. S. W. HART

Sir Ernest Sidney Walter Hart, a former Clerk of the Peace and Clerk of the County Council of Middlesex, died on 29th January, aged 86. He was chairman and hon. secretary of the Society of Clerks of the Peace of Counties from 1925-35, and the Society of Chairmen and Deputy Chairmen of Quarter Sessions from 1919-35.

MR. H. F. LING

Mr. Hubert Frederic Ling, M.C., T.D., solicitor, of Halesworth and Saxmundham, Suffolk, died on 4th February. He was admitted in 1909.

MR. B. H. WHITEFORD

Mr. Basil Hamilton Whiteford, solicitor, of Plymouth, died on 27th January, aged 79. He was admitted in 1899 and was for thirty-three years hon. secretary of the Incorporated Law Society of Plymouth.

MR. A. E. PRIEST

After sixty-five years of service with Messrs. Cooke, Cooper and Barry, solicitors, of Wokingham, Mr. Albert Ebenezer Priest has died, aged 78.

SOCIETIES

The next quarterly meeting of the LAWYERS' CHRISTIAN FELLOWSHIP will be held at The Law Society's Hall, Bell Yard, W.C.2, on 19th February, 1957, at 6.30 p.m. Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by Dr. Martyn Lloyd-Jones on the subject of "Faith and Reason."

An address on "The State, The Citizen and The Law" was given by the Lord Chancellor, Viscount Kilmuir, at a meeting of the MANSFIELD LAW CLUB at the City of London College on 24th January, 1957. On the platform were Lord Justice Denning, president of the club, the officers of the club and members of the law-teaching staff of the college.

The Lord Chancellor said that he wanted to speak not only as a lawyer but also as an administrator. One of the problems which would dominate the careers of future lawyers was the problem of holding a just balance between the claims of the State and the rights of the individual. If anybody was in doubt about the reality and complexity of this question, he should read, or read again, Lord Justice Denning's "Freedom under the Law" and "The Changing Law." He (the Lord Chancellor) wanted to emphasise that the function of the law was constantly changing; that meant not merely that it was constantly amended, but that the whole purpose of our machinery of law was gradually but uninterruptedly developing.

To-day conflicts between the interest of the State (including the interest of local authorities) and the interest of the private citizen arose in many fields: first, there was the problem of "ordinary" litigation against national corporations and Government departments which was substantially solved; secondly, there were purely administrative decisions which must be decided by an administrator responsible for policy to Parliament; thirdly, there were a great many disputes between the citizen and the State which lay somewhere between the ordinary actions in tort or contract and the purely administrative decisions. There had been a consistent tendency in the last ten years for Parliament to say that this sort of question should be decided by a tribunal, and that meant decided according to the law because such conflict between the rights of the individual and the claims of the State was—or should be—decided according to law, whether it was decided by a specially created tribunal or by the High Court of Justice. What mattered was not the form but the substance of legal process, by what name the tribunal deciding the issue was called. It should be realised that the special tribunals were here to stay. That being so, the solution of our problem was the adoption by all these tribunals of the true legal process and judicial attitude so conspicuously shown by our traditional courts and those who practised in them.

Just laws, sensible rules of procedure, fine legal scholarship, the mastery of difficult facts, all these were valuable, but what really mattered was that those who had to decide between the State and the citizen, whether judges, chairmen, referees or even administrators, should wish to decide justly and according to law. Those who took part in proceedings outside the ordinary courts, whether as advocates or members of the tribunal, should try to carry with them what they had learned in the ordinary courts both from their colleagues and from the judges, namely, the substance of the truly legal process and the judicial attitude. Only in this manner the true balance between the State and the citizen could be held: Parliament and the administrator could make it a possibility, but only those who practised the law could make it a reality.

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